

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)
) CR-18-00258-EJD
 PLAINTIFF,)
) SAN JOSE, CALIFORNIA
 VS.)
) MARCH 23, 2022
 RAMESH "SUNNY" BALWANI,)
) VOLUME 9
 DEFENDANT.)
) PAGES 1155 - 1381

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
BY: JOHN C. BOSTIC
JEFFREY B. SCHENK
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BY: ROBERT S. LEACH
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(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER:
IRENE L. RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

INDEX OF PROCEEDINGS

GOVERNMENT'S:

ERIKA CHEUNG

DIRECT EXAM BY MR. BOSTIC (RES.)

P. 1160

CROSS-EXAM BY MR. COOPERSMITH

P. 1275

INDEX OF EXHIBITS

IDENT.

EVIDENCE

GOVERNMENT'S

1227	1162
1287	1197
1323	1208
1431	1214
1512	1222
1548	1227
1589	1233
1587	1240
1633	1242
1662	1261
2567	1266
5387H	1270

DEFENDANT'S

20043	1280
10224	1286
20020	1289
20029	1294
1557	1304
9925	1311
9909	1331
9368	1337

1 SAN JOSE, CALIFORNIA

MARCH 23, 2022

2 P R O C E E D I N G S

09:05AM 3 (COURT CONVENED AT 9:05 A.M.)

09:05AM 4 (JURY IN AT 9:05 A.M.)

09:05AM 5 THE COURT: THANK YOU. PLEASE BE SEATED.

09:05AM 6 WE ARE BACK ON THE RECORD IN THE BALWANI MATTER. ALL
09:05AM 7 COUNSEL ARE PRESENT. MR. BALWANI IS PRESENT.

09:05AM 8 OUR JURY AND ALTERNATES ARE PRESENT. GOOD MORNING, LADIES
09:05AM 9 AND GENTLEMEN.

09:05AM 10 BEFORE WE BEGIN AGAIN, LET ME ASK YOU THAT QUESTION AGAIN,
09:05AM 11 PLEASE.

09:05AM 12 DURING THE RECESS LAST NIGHT AND THIS MORNING, HAVE ANY OF
09:05AM 13 YOU HAD CAUSE OR OCCASION TO DO ANY RESEARCH TO LEARN ANYTHING
09:05AM 14 ABOUT THIS CASE OR HAVE ANYONE TALK TO YOU ABOUT ANYTHING TO DO
09:05AM 15 WITH THIS CASE?

09:05AM 16 IF SO, WOULD YOU PLEASE RAISE YOUR HAND.

09:05AM 17 THANK YOU. I SEE NO HANDS. THANK YOU FOR YOUR CONTINUED
09:05AM 18 FIDELITY TO THE COURT'S ADMONITION.

09:05AM 19 I JUST WANT TO TELL YOU ABOUT OUR SCHEDULE THIS MORNING.
09:05AM 20 MY THOUGHT IS WE GO UNTIL 11:00, TAKE A 30 MINUTE BREAK, AND
09:05AM 21 RECONVENE AFTER THAT AND GO UNTIL 1:00 AND TAKE A 30 MINUTE
09:06AM 22 BREAK.

09:06AM 23 WE'RE GOING TO END AT 3:00 O'CLOCK TODAY, COUNSEL, IF THAT
09:06AM 24 SUITS YOU.

09:06AM 25 GREAT. MR. BOSTIC, YOU'D LIKE TO CONTINUE WITH YOUR

09:06AM 1
09:06AM 2
09:06AM 3
09:06AM 4
09:06AM 5
09:06AM 6
09:06AM 7
09:06AM 8
09:06AM 9
09:06AM 10
09:06AM 11
09:06AM 12
09:06AM 13
09:06AM 14
09:06AM 15
09:06AM 16
09:06AM 17
09:06AM 18
09:06AM 19
09:07AM 20
09:07AM 21
09:07AM 22
09:07AM 23
09:07AM 24
09:07AM 25

DIRECT EXAMINATION?

MR. BOSTIC: YES. THANK YOU, YOUR HONOR.

THE COURT: SURE.

GOOD MORNING, MS. CHEUNG. IF YOU WOULD RESUME THE STAND,
PLEASE, AND MAKE YOURSELF COMFORTABLE AGAIN. YOU MAY REMOVE
YOUR MASK IF YOU WISH.

WHEN YOU ARE COMFORTABLE, WOULD YOU JUST STATE YOUR NAME
AGAIN, PLEASE.

THE WITNESS: MY NAME IS ERIKA CHEUNG.

**(GOVERNMENT'S WITNESS, ERIKA CHEUNG, WAS PREVIOUSLY
SWORN.)**

THE COURT: THANK YOU.

MR. BOSTIC.

MR. BOSTIC: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION (RESUMED)

BY MR. BOSTIC:

Q. GOOD MORNING, MS. CHEUNG.

A. GOOD MORNING.

Q. I'D LIKE TO TALK TO YOU ABOUT -- SHIFTING TOPICS REGARDING
YOUR TIME AT THERANOS AND ASK YOU ABOUT DEMONSTRATIONS OF
THERANOS TECHNOLOGY?

A. OKAY.

Q. WHEN YOU WORKED AT THE COMPANY, WERE YOU INVOLVED IN ANY
WAY IN DEMONSTRATIONS OF THE THERANOS TECHNOLOGY DONE FOR
VIP'S?

09:07AM 1

A. YES.

09:07AM 2

Q. WHAT WAS YOUR INVOLVEMENT IN THOSE DEMONSTRATIONS?

09:07AM 3

A. SO MY INVOLVEMENT IN THOSE DEMONSTRATIONS IS WHEN WE WOULD

09:07AM 4

GET AN ORDER FOR A VIP SAMPLE, I WOULD RUN THE TEST FOR -- THE

09:07AM 5

ELISA TEST, SO THINGS LIKE VITAMIN D, TSH, TPSA, AND FT4.

09:07AM 6

Q. AND WHAT WAS YOUR UNDERSTANDING AT THE TIME WHO THOSE

09:07AM 7

VIP'S WERE, GENERALLY SPEAKING?

09:07AM 8

A. THE VIP'S WERE TYPICALLY INVESTORS OR SPECIAL GUESTS THAT

09:07AM 9

WE HAD COMING INTO THE COMPANY AND KIND OF MORE THAN PATIENTS.

09:07AM 10

Q. AND HOW FREQUENTLY DID THIS HAPPEN? HOW OFTEN DID YOU

09:07AM 11

WORK ON A DEMO FOR A VIP GUEST?

09:08AM 12

A. THE DEMO'S FOR THE VIP'S PROBABLY HAPPENED SEVERAL TIMES A

09:08AM 13

MONTH.

09:08AM 14

Q. AND WERE THE DEMOS RUN IN THE CLINICAL LAB WHERE PATIENT

09:08AM 15

TESTING WAS DONE OR WERE THEY RUN BY THE R&D DEPARTMENT OR SOME

09:08AM 16

OTHER GROUP?

09:08AM 17

A. SO IT DEPENDED ON THE TIME.

09:08AM 18

SO INITIALLY WHEN I STARTED WORKING FOR THE COMPANY, THEY

09:08AM 19

WERE RUN BY THE RESEARCH AND DEVELOPMENT TEAM, AND THEN IT WAS

09:08AM 20

A MIXTURE, AND THEN IT WAS EVENTUALLY RUN BY THE CLINICAL LAB.

09:08AM 21

Q. DO YOU STILL HAVE A BINDER OF DOCUMENTS IN FRONT OF YOU?

09:08AM 22

A. YES.

09:08AM 23

Q. CAN I ASK YOU TO TURN TO TAB 1227, PLEASE.

09:08AM 24

DO YOU HAVE 1227 IN FRONT OF YOU?

09:08AM 25

A. YES.

09:08AM 1 Q. AND IS THAT AN EMAIL CHAIN INCLUDING YOU AND OTHER
09:08AM 2 INDIVIDUALS AT THERANOS FROM NOVEMBER OF 2013?

09:08AM 3 A. YES.

09:08AM 4 Q. DOES THIS EMAIL CHAIN RELATE TO ONE OF THE DEMOS OR ONE OR
09:09AM 5 MORE OF THE DEMOS THAT WE HAVE BEEN DISCUSSING?

09:09AM 6 A. YES.

09:09AM 7 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 1227.

09:09AM 8 MR. COOPERSMITH: JUST A MOMENT, YOUR HONOR.

09:09AM 9 (PAUSE IN PROCEEDINGS.)

09:09AM 10 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

09:09AM 11 THE COURT: THANK YOU. THIS EXHIBIT IS ADMITTED,
09:09AM 12 AND IT MAY BE PUBLISHED.

09:09AM 13 (GOVERNMENT'S EXHIBIT 1227 WAS RECEIVED IN EVIDENCE.)

09:09AM 14 BY MR. BOSTIC:

09:09AM 15 Q. AND, MS. CHEUNG, DID EMPLOYEES AT THERANOS USE EMAILS TO
09:09AM 16 COORDINATE THE COLLECTION AND PROCESSING OF THESE DEMO SAMPLES?

09:09AM 17 A. YES.

09:09AM 18 Q. AND LET'S LOOK AT PAGE 6 OF THIS EMAIL, PLEASE, MS. WACHS.

09:10AM 19 AND DO YOU SEE ON THE SCREEN, MS. CHEUNG, AN EMAIL FROM
09:10AM 20 SOMEONE NAMED DANIEL EDLIN?

09:10AM 21 A. YES.

09:10AM 22 Q. TO SEVERAL EMPLOYEES AT THERANOS?

09:10AM 23 A. YES.

09:10AM 24 Q. AND WHO WAS DANIEL EDLIN AT THE COMPANY?

09:10AM 25 A. DANIEL EDLIN WAS ONE OF THE PROJECT MANAGERS.

09:10AM 1 Q. AND DID HE HAVE A SPECIFIC ROLE IN CONNECTION WITH DEMOS
09:10AM 2 LIKE THIS ONE?

09:10AM 3 A. HE WAS THE PRODUCT LEADER AND HANDLED BASICALLY ALL OF THE
09:10AM 4 DEMO SAMPLES, SO WE WOULD REPORT BACK ALL OF OUR RESULTS TO
09:10AM 5 DANIEL. HE WOULD LET US KNOW WHEN THERE WAS A PARTICULAR DEMO
09:10AM 6 SAMPLE THAT WE HAD TO RUN.

09:10AM 7 Q. IN THIS EMAIL ON OCTOBER 22ND, 2013, THREE PARAGRAPHS DOWN
09:10AM 8 IN HIS EMAIL HE SAYS, "THE DEFAULT TEST LIST FOR THIS GROUP OF
09:10AM 9 DEMOS IS," AND THEN HE LISTS SEVERAL DIFFERENT TESTS.

09:10AM 10 DO YOU SEE THAT?

09:10AM 11 A. YES.

09:10AM 12 Q. AND THE TESTS LISTED ARE CHEM 14, LIPIDS, CBC, AND
09:11AM 13 VITAMIN D/TSH/PSA; IS THAT CORRECT?

09:11AM 14 A. THAT IS CORRECT.

09:11AM 15 Q. FROM YOUR MEMORY AT YOUR TIME AT THE COMPANY, CAN YOU TELL
09:11AM 16 US WHICH OF THESE COULD BE RUN ON THE EDISON DEVICE AND WHICH
09:11AM 17 COULD NOT?

09:11AM 18 A. THE ONLY TEST THAT COULD BE RUN ON THE EDISON DEVICE WERE
09:11AM 19 VITAMIN D, TSH, AND PSA.

09:11AM 20 AND CHEM 14, LIPIDS, CBC COULD NOT BE RUN ON THE EDISON
09:11AM 21 DEVICE.

09:11AM 22 Q. AND CHEM 14, LIPIDS, AND CBC, WERE THOSE EACH INDIVIDUAL
09:11AM 23 TESTS OR WERE THEY PANELS OF TESTS?

09:11AM 24 A. THOSE WERE PANELS OF TESTS.

09:11AM 25 Q. SO DOES THAT MEAN LOOKING AT THIS AS A LIST OF TESTS, THE

09:11AM 1 MAJORITY OF THESE TESTS COULD NOT BE RUN ON THE THERANOS-BUILT
09:11AM 2 ANALYZER?
09:11AM 3 A. THAT'S CORRECT.
09:11AM 4 Q. LET'S LOOK AT PAGE 4 OF THE SAME EXHIBIT. LET'S ZOOM IN
09:12AM 5 ON THE MIDDLE MESSAGE FROM SOMEBODY NAMED MAX FOSQUE.
09:12AM 6 AND WHO WAS MAX FOSQUE AT THERANOS?
09:12AM 7 A. MAX FOSQUE WAS ALSO A PRODUCT MANAGER AS WELL.
09:12AM 8 Q. AND DID HE HAVE A SIMILAR ROLE IN CONNECTION WITH THESE
09:12AM 9 DEMONSTRATIONS AS MR. EDLIN?
09:12AM 10 A. YES.
09:12AM 11 Q. AND MR. FOSQUE'S EMAIL ON OCTOBER 28TH, HE TALKS ABOUT A
09:12AM 12 DEMO THAT IS SCHEDULED FOR THE FOLLOWING DAY; IS THAT RIGHT?
09:12AM 13 A. THAT IS CORRECT.
09:12AM 14 Q. AND HE PROVIDES A BULLET POINT LIST WITH SOME DIRECTIONS.
09:12AM 15 DO YOU SEE THAT?
09:12AM 16 A. YES.
09:12AM 17 Q. AND THERE'S A TEST LIST FOR THIS DEMO WHICH INCLUDES CBC
09:12AM 18 AND CHEM 14, AND THEN HE SAYS WITH VITAMIN D ADDED IF
09:12AM 19 EVERYTHING IS GOING SMOOTHLY.
09:12AM 20 DO YOU SEE THAT?
09:12AM 21 A. YES.
09:12AM 22 Q. AND WHAT WAS YOUR UNDERSTANDING AT THE TIME OF WHAT THAT
09:12AM 23 MEANT? WHY WOULD AN ASSAY NEED TO BE INCLUDED ONLY IF
09:12AM 24 SOMETHING WAS GOING SMOOTHLY?
09:12AM 25 A. SO TYPICALLY WE HAD REQUIREMENTS IN HOW LONG IT WOULD TAKE

09:13AM 1 TO GIVE A PATIENT A RESULT, SO THINGS HAD TO BE IN AN HOUR OR
09:13AM 2 TWO.

09:13AM 3 AND IF, SAY, QUALITY CONTROLS DIDN'T PASS OR MAYBE THERE
09:13AM 4 WAS SOME SORT OF PROCESSING ERROR, THERE WOULDN'T BE ENOUGH
09:13AM 5 TIME IN ORDER TO CONDUCT THAT FOLLOW-ON TEST.

09:13AM 6 AND ALSO IN TERMS OF THE EDISON DEVICES AND THE EDISON
09:13AM 7 TESTS, SOMETIMES WE WOULDN'T HAVE THE SYSTEM PREPARED BECAUSE
09:13AM 8 OF QUALITY CONTROL FAILURES USUALLY IN ORDER TO RUN VITAMIN D.

09:13AM 9 SO THAT'S PROBABLY IN REFERENCE TO THE FACT THAT IT
09:13AM 10 WOULDN'T HIT THE MARKER OF TIME OR THERE WAS SOME SORT OF OTHER
09:13AM 11 OPERATIONAL ISSUE THAT WOULD PREVENT US FROM BEING ABLE TO RUN
09:13AM 12 IT.

09:13AM 13 Q. AND DO I UNDERSTAND CORRECTLY FROM YOUR TESTIMONY THAT
09:13AM 14 ACCORDING TO THIS EMAIL, THE NON-THERANOS EDISON TESTS WOULD BE
09:13AM 15 PERFORMED AND THE EDISON TESTS WOULD ONLY BE PERFORMED IF
09:13AM 16 THINGS WERE RUNNING SMOOTHLY?

09:13AM 17 MR. COOPERSMITH: OBJECTION. LEADING.

09:13AM 18 THE COURT: COUNSEL, DO YOU WANT TO REPHRASE YOUR
09:13AM 19 QUESTION?

09:14AM 20 BY MR. BOSTIC:

09:14AM 21 Q. MS. CHEUNG, IN THIS EMAIL IT SAYS THAT CBC AND CHEM 14
09:14AM 22 WOULD BE PERFORMED AND VITAMIN D ADDED ONLY IF EVERYTHING WAS
09:14AM 23 GOING SMOOTHLY.

09:14AM 24 WHAT WAS THE DIFFERENCE BETWEEN CBC AND CHEM 14 ON THE ONE
09:14AM 25 HAND AND VITAMIN D ON THE OTHER HAND AS FAR AS WHICH DEVICES

09:14AM 1 WERE USED TO RUN THOSE TESTS?

09:14AM 2 A. SO CBC AND CHEM 14 USED OTHER OFF-THE SHELF ANALYZERS THAT
09:14AM 3 WERE MODIFIED USING THERANOS METHODS VERSUS VITAMIN D WAS USING
09:14AM 4 THE THERANOS-CREATED DEVICE, THE EDISON, IN ORDER TO RUN IT.

09:14AM 5 SO AT LEAST WITH THE OFF-THE-SHELF THEY WERE A LITTLE MORE
09:14AM 6 PREDICTABLE IF THEY WERE READY TO GO IF THE QC'S PASSED AND HOW
09:14AM 7 LONG IT WOULD TAKE.

09:14AM 8 Q. AND YOU ARE USING THE TERM QC THAT I'D LIKE TO TALK TO YOU
09:14AM 9 IN A MINUTE, BUT WE'LL SAVE THAT FOR ONE MOMENT IF THAT'S OKAY.

09:14AM 10 A. ALL RIGHT.

09:14AM 11 Q. THIS REFERENCE TO THINGS GOING SMOOTHLY, IN YOUR
09:15AM 12 EXPERIENCE IN WORKING ON THESE DEMOS, DID THINGS USUALLY GO
09:15AM 13 SMOOTHLY OR WERE THERE PROBLEMS ENCOUNTERED?

09:15AM 14 A. THERE WERE MANY PROBLEMS THAT WERE ENCOUNTERED.

09:15AM 15 Q. LET'S LOOK AT PAGE 3 OF THE SAME EXHIBIT, AND LET'S ZOOM
09:15AM 16 IN ON THE TOP PORTION OF THE PAGE.

09:15AM 17 AND DO YOU SEE AN EMAIL FROM OCTOBER 30TH TO MANY PEOPLE
09:15AM 18 IN THIS SAME GROUP FROM SOMEONE NAMED KATHRYN ROMMEL?

09:15AM 19 A. YES.

09:15AM 20 Q. AND WHO WAS KATHRYN ROMMEL AT THERANOS?

09:15AM 21 A. KATHRYN ROMMEL WAS ONE OF THE SCIENTISTS IN THE GENERAL
09:15AM 22 CHEMISTRY DEPARTMENT.

09:15AM 23 Q. SHE ASKED A QUESTION IN CONNECTION WITH THE DEMO FOR THAT
09:15AM 24 DAY. AND THE QUESTION IS "DOES THE ISE SAMPLE NEED TO BE RUN
09:15AM 25 WITH THE SIEMENS PROTOCOL AGAIN?"

09:15AM 1 DO YOU SEE THAT QUESTION?

09:15AM 2 A. YES.

09:15AM 3 Q. WHAT DID ISE MEAN AT THERANOS?

09:15AM 4 A. THE ISE, I BELIEVE, IS THE ELECTROLYTES FOR THE SAMPLE,
09:16AM 5 BUT I CAN'T BE CERTAIN.

09:16AM 6 Q. IS IT A PARTICULAR KIND OF TEST?

09:16AM 7 A. IT'S A PARTICULAR TYPE OF TEST.

09:16AM 8 Q. AND WHAT IS THIS EMAIL REFERENCING WHEN MS. ROMMEL ASKS IF
09:16AM 9 THE ISE SAMPLE NEEDS TO BE RUN WITH THE SIEMENS PROTOCOL?

09:16AM 10 A. SO IN THIS CONTEXT THE ISE SAMPLE THAT THEY'RE TALKING
09:16AM 11 ABOUT IS IF IT NEEDS TO BE RUN ON THE SIEMENS ADVIA.

09:16AM 12 Q. AND WAS THE SIEMENS ADVIA A THERANOS-DESIGNED OR BUILT
09:16AM 13 DEVICE?

09:16AM 14 A. NO.

09:16AM 15 Q. IT WAS A THIRD PARTY DEVICE?

09:16AM 16 A. YES.

09:16AM 17 Q. SO YOU SAID THAT YOU WERE INVOLVED IN PROCESSING THE
09:16AM 18 SAMPLES FOR THESE DEMOS; IS THAT CORRECT?

09:16AM 19 A. THAT IS CORRECT.

09:16AM 20 Q. CAN YOU TELL US ABOUT THE WORKFLOW FOR ACTUALLY PROCESSING
09:16AM 21 ONE OF THESE SAMPLES?

09:16AM 22 AND LET'S GO BACK TO PAGE 6 OF THIS EXHIBIT AND LOOK AT
09:16AM 23 THIS LIST OF ASSAYS IF WE CAN.

09:17AM 24 SO WE SEE THIS LIST OF ASSAYS, CHEM 14, LIPIDS, AND CBC
09:17AM 25 PANELS AND VITAMIN D/TSH, AND PSA; IS THAT RIGHT?

09:17AM 1 A. THAT IS CORRECT.

09:17AM 2 Q. AND CAN YOU WALK US THROUGH THE PROCESS AT THERANOS FOR
09:17AM 3 ACTUALLY RUNNING THE TESTS ON A PATIENT SAMPLE FOR ONE OF THESE
09:17AM 4 DEMOS THAT INCLUDED THESE TESTS?

09:17AM 5 MR. COOPERSMITH: YOUR HONOR, LACKS FOUNDATION.

09:17AM 6 SHE TESTIFIED SHE ONLY RAN THE ELISA SAMPLES.

09:17AM 7 THE COURT: DO YOU WANT TO LAY A FOUNDATION FOR
09:17AM 8 THIS?

09:17AM 9 BY MR. BOSTIC:

09:17AM 10 Q. MS. CHEUNG, DURING YOUR TIME AT THERANOS, DID YOU BECOME
09:17AM 11 FAMILIAR WITH HOW EACH OF THESE CATEGORIES OF ASSAYS WAS RUN AT
09:17AM 12 THE COMPANY?

09:17AM 13 A. YES.

09:17AM 14 Q. AND DID THAT FAMILIARITY COME FROM THE TIME YOU SPENT IN
09:17AM 15 R&D AS WELL AS IN CLIA?

09:17AM 16 A. YES.

09:17AM 17 Q. SO CAN YOU WALK US THROUGH, FOR A SAMPLE THAT CAME IN
09:18AM 18 AROUND THIS TIME PERIOD, WHAT WOULD BE THE PROCESS AT THERANOS
09:18AM 19 FOR CONDUCTING THESE TESTS ON A PATIENT SAMPLE?

09:18AM 20 A. SO TYPICALLY WHAT WOULD HAPPEN IS A PHLEBOTOMIST WOULD
09:18AM 21 COME BACK INTO THE BACK LABORATORY AND GIVE US AGAIN THAT BLOOD
09:18AM 22 SAMPLE IN THE SMALL NANOTAINER.

09:18AM 23 AND THEN FROM THERE WE WOULD HAVE TO SCAN IT TO SEE OR WE
09:18AM 24 WOULD KNOW FROM THE EMAIL WHAT TEST WE WOULD HAVE TO RUN.

09:18AM 25 SO THEN EACH TEAM WOULD NEED A SAMPLE SIZE OF THAT BLOOD

09:18AM 1 SAMPLE.

09:18AM 2 SO, FOR EXAMPLE, IF IT HAD A CBC BECAUSE IT'S WHOLE BLOOD,
09:18AM 3 WE WOULD HAVE TO GIVE IT TO THE CYTOMETRY SEEM. THEY WOULD GO
09:18AM 4 AND COLLECT THEIR BLOOD SAMPLE, THEY WOULD GIVE IT BACK TO THE
09:18AM 5 GENERAL CHEMISTRY TEAM, THEY WOULD SPIN IT IN A CENTRIFUGE,
09:18AM 6 THEY WOULD TAKE THEIR BLOOD.

09:18AM 7 AND THEN SAY, AND LET US KNOW ON THE EDISON TEAM, OKAY,
09:18AM 8 IT'S AVAILABLE FOR YOU TO TAKE COLLECTION.

09:18AM 9 SO THEN WE WOULD TAKE COLLECTION. WE WOULD TAKE THE SMALL
09:18AM 10 SAMPLE. WE WOULD AGAIN PUT IT -- SCAN IT AND SEE WHAT TESTS WE
09:18AM 11 HAD TO RUN, GO AND LABEL OUR CARTRIDGES, GRAB OUR CARTRIDGES,
09:19AM 12 TAKE IT OVER TO THE TECAN, HAVE THE TECAN DISPENSE THE BLOOD
09:19AM 13 INTO THE CARTRIDGE.

09:19AM 14 ONCE THAT WAS DONE, WE WOULD MAKE SURE THAT THE BAR CODE
09:19AM 15 WAS ON THERE PROPERLY. WE WOULD TAKE IT OVER TO THE EDISON
09:19AM 16 DEVICE. WE WOULD RUN IT IN THE EDISON DEVICE MAKING SURE THAT
09:19AM 17 WE CHECKED ON THE TOUCHSCREEN THAT IT WAS THE ACCURATE TEST, WE
09:19AM 18 WOULD HIT START, AND THEN IT WOULD RUN FROM ANYWHERE FROM ONE
09:19AM 19 TO TWO HOURS DEPENDING ON WHAT TEST.

09:19AM 20 AND SAY IF IT WAS THE CASE THAT WE DID VITAMIN D, TSH,
09:19AM 21 PSA, WE HAD TO DO THIS IF IT WERE THREE TESTS THREE TIMES. SO
09:19AM 22 FOR ONE TEST FOR ONE PATIENT, THAT WHOLE CYCLE IS WHAT WE WOULD
09:19AM 23 DO.

09:19AM 24 BUT IF IT WAS THREE TESTS FOR ONE PATIENT, WE WOULD DO
09:19AM 25 THAT CYCLE THREE TIMES.

09:19AM 1 Q. AND WHAT DIFFERENT KINDS OF ANALYZERS WOULD BE REQUIRED TO
09:19AM 2 RUN THIS GROUP, SAY, OF ASSAYS ON A SINGLE PATIENT SAMPLE?
09:20AM 3 A. FOR CHEM 14, LIPIDS, CBC, AND THE VITAMIN D, TSH?
09:20AM 4 Q. YES.
09:20AM 5 A. SO THE CHEM 14 AND LIPIDS WOULD REQUIRE A TECAN IN A
09:20AM 6 SIEMENS ADVIA --
09:20AM 7 Q. START WITH THE TYPE OF TEST.
09:20AM 8 A. SO FOR THE CHEM 14 AND THE LIPIDS, IT WOULD REQUIRE A
09:20AM 9 TECAN IN THE SIEMENS ADVIA MACHINE.
09:20AM 10 AND THEN FOR CBC IT WOULD REQUIRE THE TECAN IN ADDITION TO
09:20AM 11 A FLOW CYTOMETER CALLED THE BD FORTESSA.
09:20AM 12 AND THEN FOR VITAMIN D, TSH, AND PSA IT WOULD REQUIRE THE
09:20AM 13 TECAN AND THE EDISON DEVICES.
09:20AM 14 Q. SO FOR THIS GROUP OF TESTS, HOW MANY TIMES WOULD A SAMPLE
09:21AM 15 NEED TO BE SUBDIVIDED?
09:21AM 16 A. FOR -- SAY IF WE DID ALL OF THESE?
09:21AM 17 Q. UH-HUH.
09:21AM 18 A. IT WOULD NEED TO BE SUBDIVIDED SIX TIMES.
09:21AM 19 Q. SO YOU WOULD NEED TO TAKE A SMALL SAMPLE THAT CAME IN AND
09:21AM 20 BREAK IT UP INTO THE SIX EVEN SMALLER SAMPLES?
09:21AM 21 A. YES.
09:21AM 22 Q. AND THE DEVICES USED TO RUN THE CBC PANEL AND THE CHEM 14
09:21AM 23 AND LIPIDS PANELS, WERE THOSE THERANOS DESIGNED OR MANUFACTURED
09:21AM 24 DEVICES?
09:21AM 25 A. NO.

09:21AM 1 Q. AND HOW MANY PEOPLE AT THERANOS, IF YOU CAN ESTIMATE,
09:21AM 2 WOULD BE REQUIRED TO RUN THIS MANY TESTS ON A SINGLE PATIENT
09:21AM 3 SAMPLE IN THIS CONTEXT?

09:21AM 4 A. AT A MINIMUM THERE WOULD NEED TO BE ABOUT FOUR PEOPLE.

09:22AM 5 Q. I'D LIKE TO ASK ABOUT THE CLINICAL LAB AT THERANOS. DID
09:22AM 6 YOU ALSO WORK IN THE CLINICAL LAB?

09:22AM 7 A. YES.

09:22AM 8 Q. AND WAS THERE A TIME WHEN YOU TRANSITIONED FROM WORKING IN
09:22AM 9 R&D TO CLINICAL?

09:22AM 10 A. YES.

09:22AM 11 Q. AND WHEN DID THAT HAPPEN APPROXIMATELY?

09:22AM 12 A. SO APPROXIMATELY THAT HAPPENED -- THERE WAS A BIT OF
09:22AM 13 OVERLAP. SO I WAS KIND OF IN BOTH. BUT IT HAPPENED AROUND
09:22AM 14 DECEMBER OR JANUARY AND THEN THE FULL CONVERSION MAYBE IN
09:22AM 15 FEBRUARY.

09:22AM 16 Q. AND WE'RE STILL IN 2014?

09:22AM 17 A. WE'RE STILL IN -- YEAH, DECEMBER OF 2013 TO FEBRUARY OF
09:22AM 18 2014.

09:22AM 19 Q. WHERE WAS THE CLINICAL LAB; LOCATED IN THE THERANOS
09:22AM 20 BUILDING?

09:22AM 21 A. SO THERE WERE TWO CLINICAL LABS. SO THERE WAS AN UPSTAIRS
09:22AM 22 CLINICAL LAB THAT HAD ALL OF THE FDA APPROVED MACHINES, AND
09:22AM 23 THAT WAS CALLED THE DINOSAUR LAB, AND THEN WE ADDITIONALLY HAD
09:22AM 24 A SECONDARY CLINICAL LAB IN THE DOWNSTAIRS LIKE BASEMENT AREA
09:23AM 25 THAT WAS CALLED NORMANDY. AND THAT'S WHERE ALL OF THE THERANOS

09:23AM 1 DEVICES, THE EDISON DEVICES, IN ADDITION TO THE
09:23AM 2 THERANOS-MODIFIED DEVICES WERE LOCATED.

09:23AM 3 Q. WHO CALLED THE UPSTAIRS LAB THE DINOSAUR LAB AT THERANOS?

09:23AM 4 A. THAT WAS JUST THE NAME IT WAS GIVEN.

09:23AM 5 Q. AND WHAT WAS YOUR UNDERSTANDING AS TO WHY IT WAS CALLED
09:23AM 6 THE DINOSAUR LAB?

09:23AM 7 A. IT WAS CALLED THE DINOSAUR LAB BECAUSE IT WAS ALL THE OLD
09:23AM 8 WHAT WE CALL PREDICATE MACHINES OF THE TYPE OF BLOOD
09:23AM 9 DIAGNOSTICS THAT YOU WOULD HAVE SEEN IN THE PAST VERSUS WHAT WE
09:23AM 10 WERE TRYING TO BUILD IN THE FUTURE WHICH WAS LEVERAGING
09:23AM 11 FINGERSTICK TECHNOLOGY IN ORDER TO PROCESS BLOOD SAMPLES.

09:23AM 12 Q. AND THOSE THERANOS-SPECIFIC DEVICES WERE IN THE DOWNSTAIRS
09:23AM 13 PORTION OF THE LAB?

09:23AM 14 A. THAT'S CORRECT.

09:23AM 15 Q. WHEN YOU WORKED IN THE CLINICAL LAB, CAN YOU DESCRIBE HOW
09:23AM 16 YOU FIT INTO THE ORGANIZATION? WHO DID YOU REPORT TO AND WHO
09:23AM 17 DID YOU WORK AROUND?

09:23AM 18 A. YEAH. SO IN THE CLINICAL LAB THERE WAS SUNNY AND
09:23AM 19 ELIZABETH AT THE TOP;

09:24AM 20 AND THEN WHO REPORTED TO SUNNY AND ELIZABETH WERE THE LAB
09:24AM 21 DIRECTOR AND THE MEDICAL DIRECTOR;

09:24AM 22 AND THEN UNDERNEATH THE LAB DIRECTOR AND THE MEDICAL
09:24AM 23 DIRECTOR THERE WAS A QC SPECIALIST AND QC MANAGER. THERE WERE
09:24AM 24 OTHER TYPES OF CLINICAL LAB MANAGERS I WOULD SAY.

09:24AM 25 AND THEN UNDERNEATH THEM WERE CLINICAL LAB SCIENTISTS;

09:24AM 1 AND THEN UNDERNEATH THEM WERE THE LAB ASSOCIATES AND THE
09:24AM 2 CUSTOMER SERVICE REPRESENTATIVES.

09:24AM 3 AND I WAS AT THE BOTTOM OF THAT CHAIN AT THE LAB ASSOCIATE
09:24AM 4 LEVEL.

09:24AM 5 Q. SO WHAT WAS YOUR ROLE THEN? WHAT WAS THE WORK THAT YOU
09:24AM 6 WERE DOING IN THE CLINICAL LAB ON A DAY-TO-DAY BASIS?

09:24AM 7 A. SO THE ROLE AND THE DUTIES I HAD ON A DAILY BASIS WERE
09:24AM 8 ESSENTIALLY PREPARING THE LABORATORY IN ORDER TO GET READY TO
09:24AM 9 PROCESS PATIENT SAMPLES.

09:24AM 10 I WAS IN CHARGE OF RUNNING QUALITY CONTROLS, AND THAT'S
09:24AM 11 ESSENTIALLY A CHECK THAT YOU HAVE TO DO BEFORE YOU RUN THE
09:25AM 12 PATIENT SAMPLES.

09:25AM 13 AND THEN I WOULD ACTIVELY PROCESS THE PATIENT SAMPLES.

09:25AM 14 AND THEN I WOULD SAY IF RESEARCH AND DEVELOPMENT NEEDED TO
09:25AM 15 CONVERT THINGS OVER TO THE CLINICAL LAB, I WAS ALSO TASKED WITH
09:25AM 16 CONVERTING NEW ASSAYS OVER THERE, MAKING SURE WE HAD THE PROPER
09:25AM 17 INFRASTRUCTURE, LIKE DO WE HAVE THE CHEMICALS THAT WE NEED, DO
09:25AM 18 WE HAVE THE CORRECT SOP'S THAT WE NEED, ARE PEOPLE AWARE OF THE
09:25AM 19 NEW TYPES OF PATIENT TESTS THAT WE MIGHT BE RECEIVING.

09:25AM 20 Q. YOU MENTIONED THE STRUCTURE OF PART OF THE COMPANY. I'D
09:25AM 21 LIKE TO ASK YOU A LITTLE BIT MORE ABOUT MR. BALWANI'S
09:25AM 22 INVOLVEMENT.

09:25AM 23 HOW FREQUENTLY DID YOU SEE HIM, LET'S SAY, IN THE OFFICE
09:25AM 24 DURING YOUR TIME WORKING IN THE CLINICAL LAB?

09:25AM 25 A. IN THE OFFICE? HE WAS THERE QUITE FREQUENTLY IN HIS

09:25AM 1 OFFICE.

09:25AM 2 Q. AND HOW ABOUT IN THE CLINICAL LAB SECTION ITSELF? WAS HE

09:25AM 3 EVER THERE?

09:25AM 4 A. HE WAS IN THE CLINICAL LAB SECTION EVERY ONCE IN A WHILE,

09:25AM 5 SO YOU WOULD SEE HIM PROBABLY ON A MONTHLY BASIS.

09:25AM 6 Q. AND DID YOU HAVE DIRECT CONTACT WITH MR. BALWANI IN

09:26AM 7 CONNECTION WITH YOUR WORK AT THE CLINICAL LAB?

09:26AM 8 A. NOT ALWAYS, NOT ALWAYS.

09:26AM 9 EVERY ONCE IN A WHILE HE WOULD DO WALKTHROUGHS AND ASK

09:26AM 10 QUESTIONS ABOUT WHAT WE WERE WORKING ON.

09:26AM 11 Q. THERE WERE A FEW LAYERS OF REPORTING IN BETWEEN YOU AND

09:26AM 12 MR. BALWANI; IS THAT RIGHT?

09:26AM 13 A. THAT IS CORRECT.

09:26AM 14 Q. DURING YOUR TIME WORKING IN THE CLINICAL LAB, DID YOU

09:26AM 15 CONTINUE TO DO ANY R&D WORK AT THERANOS?

09:26AM 16 A. CAN YOU REPEAT THAT QUESTION.

09:26AM 17 Q. DURING YOUR TIME IN THE CLINICAL LAB AFTER YOU HAD

09:26AM 18 TRANSITIONED OVER TO THAT PART --

09:26AM 19 A. YES.

09:26AM 20 Q. -- DID YOU CONTINUE TO DO ANY RESEARCH AND DEVELOPMENT

09:26AM 21 WORK?

09:26AM 22 A. YES.

09:26AM 23 Q. AND WHAT KIND OF WORK WERE YOU STILL DOING FOR RESEARCH

09:26AM 24 AND DEVELOPMENT?

09:26AM 25 A. SO ANY TIME THAT THEY HAD CERTAIN VALIDATION STUDIES AND

09:26AM 1 THEY NEEDED SOMEONE TO RUN CARTRIDGES, I WOULD RUN THEM FOR
09:26AM 2 THEM.

09:26AM 3 WE WERE CONVERTING CONSTANTLY OVER TO NEW TYPES OF
09:26AM 4 SYSTEMS. SO, FOR EXAMPLE, WE USED TO HAND FILL THE CARTRIDGES
09:26AM 5 WITH ALL OF THE REAGENTS, BUT THEN WE HAD THIS SYSTEM CALLED
09:27AM 6 CAPSYS, AND THAT'S SPELLED C-A-P-S-Y-S. SO WE HAD TO TEST, YOU
09:27AM 7 KNOW, WHAT ARE THE STABILITY OF THOSE CARTRIDGES OVER OTHERS.

09:27AM 8 ALSO, ANYTHING THAT MAY HAVE COME UP. SOMETIMES THEY
09:27AM 9 WOULD HAVE US RUN EXTRA VALIDATION STUDIES TO SEE WHAT WAS
09:27AM 10 GOING ON. YEAH.

09:27AM 11 Q. AND WHEN YOU REFER TO EXTRA VALIDATION STUDIES TO SEE WHAT
09:27AM 12 WAS GOING ON, WHAT KINDS OF REASONS WOULD PROMPT THOSE EXTRA
09:27AM 13 STUDIES?

09:27AM 14 A. TYPICALLY IT WAS BECAUSE WE WERE SEEING A LOT OF FAILURES
09:27AM 15 WITH QUALITY CONTROL DATA, OR WE WERE JUST HAVING A LOT OF
09:27AM 16 ISSUES WITH THE PERFORMANCE OF THE TEST, AND SO WE NEEDED TO
09:27AM 17 JUST HAVE CERTAIN CHECKS TO SEE, OKAY, WHAT IS CAUSING THESE
09:27AM 18 ISSUES? HOW DO WE RESOLVE THE FACT THAT WE'RE HAVING PROBLEMS
09:27AM 19 ON A FREQUENT BASIS TO MAKE SURE THAT THE SYSTEM IS WORKING
09:27AM 20 PROPERLY TO ACTUALLY TEST THE PATIENTS IN ADDITION TO NOT MAKE
09:28AM 21 IT SO CUMBERSOME FOR OUR WORKFLOW, THE FACT THAT WE'RE
09:28AM 22 CONSTANTLY HAVING TO DO CRISIS MANAGEMENT BECAUSE THERE WERE SO
09:28AM 23 MANY ISSUES AND STAY UP LATE AND NOT BE ABLE TO BASICALLY DO
09:28AM 24 OUR WORK IN A TIMELY MANNER.

09:28AM 25 Q. SO IN EARLY 2014 AT THERANOS, YOU'RE WORKING ON BOTH

09:28AM 1 SIDES? YOU'RE WORKING ON THE CLINICAL SIDE SEEING THESE ISSUES
09:28AM 2 WITH PATIENT TESTING AND ALSO ON THE RESEARCH AND DEVELOPMENT
09:28AM 3 SIDE TRYING TO ADDRESS THOSE ISSUES?

09:28AM 4 A. CORRECT.

09:28AM 5 Q. I'D LIKE TO TALK TO YOU ABOUT QC WHAT YOU MENTIONED. CAN
09:28AM 6 YOU EXPLAIN FOR US WHAT QC REFERS TO?

09:28AM 7 A. SO QUALITY CONTROL IS ESSENTIALLY SORT OF LIKE A TESTING
09:28AM 8 SYSTEM THAT YOU HAVE BEFORE YOU RUN A PATIENT SAMPLE.

09:28AM 9 SO IN QC YOU HAVE A KNOWN CONCENTRATION OF A PARTICULAR
09:28AM 10 TEST. SO, FOR EXAMPLE, FOR VITAMIN D WHEN I HAVE THE QC
09:28AM 11 SAMPLE, I KNOW THAT IT'S, YOU KNOW, TEN NANOTAINERS PER MILL.

09:29AM 12 AND SO BEFORE I RUN MY PATIENT SAMPLE, I BASICALLY THROW
09:29AM 13 THAT INTO THE MACHINE, IT GIVES ME AN ANSWER, AND IT SHOULD
09:29AM 14 IDEALLY BE TEN NANOGRAMS PER MILL OR IN SOME ACCEPTABLE RANGE
09:29AM 15 FOR THAT. YOU WILL HAVE A HIGH VALUE, A LOW VALUE, SOMETIMES
09:29AM 16 YOU'LL HAVE THREE, YOU'LL HAVE A MIDDLE ONE.

09:29AM 17 AND BASICALLY THAT GIVES YOU SOME LEVEL OF CONFIDENCE THAT
09:29AM 18 ALL OF THE PARTS AND PIECES OF THE SYSTEM ARE WORKING PROPERLY
09:29AM 19 BECAUSE IN DIAGNOSTICS YOU HAVE TO CHECK THINGS LIKE THE
09:29AM 20 CHEMICALS YOU'RE USING, IS SOMEONE TRAINED OR NOT, YOU KNOW,
09:29AM 21 IS -- I DON'T KNOW -- IS THE SYSTEM LIKE THE DEVICE ITSELF TOO
09:29AM 22 HOT OR DOES IT HAVE SOME ISSUE, HARDWARE ISSUE?

09:29AM 23 SO THAT'S EFFECTIVELY WHAT QUALITY CONTROL IS, ARE THESE
09:29AM 24 KNOWN CONCENTRATIONS, YOU RUN THEM, AND SEE IF THEY PASS OR
09:29AM 25 FAIL, AND THAT GIVES YOU THE GO AHEAD TO BE ABLE TO RUN YOUR

09:29AM 1 PATIENT SAMPLE.

09:30AM 2 Q. AND THE QUALITY CONTROL CHECKS, WERE THEY TEST SPECIFIC?

09:30AM 3 IN OTHER WORDS, DID YOU HAVE TO RUN A SPECIFIC QUALITY CONTROL

09:30AM 4 CHECK FOR, SAY, A VITAMIN D TEST BEFORE YOU COULD RUN A

09:30AM 5 VITAMIN D TEST?

09:30AM 6 A. THAT IS CORRECT.

09:30AM 7 Q. AND HOW FREQUENTLY DID THOSE QUALITY CONTROL CHECKS HAVE

09:30AM 8 TO BE DONE IN THE CLINICAL LAB?

09:30AM 9 A. THEY HAD TO BE DONE EVERY DAY.

09:30AM 10 Q. EVERY DAY FOR EACH MACHINE?

09:30AM 11 A. YES.

09:30AM 12 Q. AND FOR EACH ASSAY THAT THAT MACHINE WAS GOING TO BE RUN

09:30AM 13 IN?

09:30AM 14 A. YES.

09:30AM 15 Q. AND WHAT HAPPENED AT THERANOS OR WHAT WAS SUPPOSED TO

09:30AM 16 HAPPEN IF A MACHINE DIDN'T PASS THAT QUALITY CONTROL CHECK FOR

09:30AM 17 A CERTAIN TEST ON A CERTAIN DAY?

09:30AM 18 A. SO IF A QUALITY CONTROL FAILED, ESSENTIALLY WE WOULD HAVE

09:30AM 19 TO CONDUCT AN INVESTIGATION TO SEE WHAT THE ISSUE WAS.

09:30AM 20 SO WAS IT THE CASE THAT THERE'S AN ISSUE OR SOME SORT OF

09:30AM 21 FAILURE WITH THE SYSTEM? WAS IT SORT OF A FLUKE INCIDENT?

09:31AM 22 AND FROM THERE WE WOULD, YOU KNOW, TRY AND RESOLVE WHAT

09:31AM 23 WAS THE ISSUE.

09:31AM 24 TYPICALLY IF IT DID FAIL, WE WOULD TRY TO RUN QUALITY

09:31AM 25 CONTROLS ON ANOTHER SET OF MACHINES TO SEE IF WE COULD STILL

09:31AM 1 RUN A PATIENT SAMPLE.

09:31AM 2 AND THEN ALTERNATIVELY IF WE WERE NOT ABLE TO FIGURE OUT
09:31AM 3 WHAT THE ACTUAL ISSUE IS, WE WOULD HAVE TO RECALIBRATE THE
09:31AM 4 WHOLE SYSTEM, WHICH IS ABOUT A 20 TO AN 80 HOUR PROCESS.

09:31AM 5 Q. AND WHY DID THAT HAVE TO BE DONE? WHY COULDN'T THE
09:31AM 6 MACHINE BE USED FOR TESTING AFTER IT FAILED QUALITY CONTROL?

09:31AM 7 A. IT WAS PART OF OUR PROTOCOLS IN THE SOP'S AT THERANOS, AND
09:31AM 8 IN ADDITION TO THE FACT THAT IT'S A GOOD INDICATION THAT
09:31AM 9 THERE'S SOMETHING WRONG WITH YOUR SYSTEM, SO IT'S PROBABLY NOT
09:31AM 10 GOING TO GIVE YOU RELIABLE RESULTS FOR THE PATIENT SAMPLES IF
09:31AM 11 IT'S NOT WORKING FOR THIS SAMPLE THAT YOU KNOW THE
09:31AM 12 CONCENTRATION OF.

09:31AM 13 Q. CAN YOU TURN IN YOUR BINDER TO TAB 1289, PLEASE.

09:32AM 14 AND IS 1289 AN EMAIL CHAIN INCLUDING YOU AND OTHER
09:32AM 15 EMPLOYEES AT THERANOS FROM NOVEMBER 2013?

09:32AM 16 A. YES.

09:32AM 17 Q. AND DOES IT RELATE TO QUALITY CONTROL AS WE'VE BEEN
09:32AM 18 DISCUSSING?

09:32AM 19 A. YES.

09:32AM 20 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 1289.

09:32AM 21 MR. COOPERSMITH: YOUR HONOR, I HAVE AN OBJECTION
09:32AM 22 UNDER RULE 106. IT'S AN INCOMPLETE EMAIL STRING.

09:32AM 23 AND I WOULD REFER THE COURT TO EXHIBIT 1288.

09:32AM 24 THE COURT: IS 1288 IN YOUR SUBMISSION IN YOUR
09:32AM 25 BINDER?

09:32AM 1 MR. BOSTIC: IT IS NOT, YOUR HONOR. IT IS NOT IN
09:32AM 2 THE COLLECTION OF DOCUMENTS THAT WE PULLED.
09:32AM 3 THIS IS THE COMPLETE VERSION OF THIS DOCUMENT.
09:33AM 4 MR. COOPERSMITH: IT JUST DOESN'T CONTAIN THE ENTIRE
09:33AM 5 STRING. IT'S INCOMPLETE.
09:33AM 6 THE OTHER DOCUMENT, 1288, HAS THE REST OF THE STRING THAT
09:33AM 7 WOULD BE RELEVANT TO THE SAME ISSUE.
09:33AM 8 THE COURT: DO YOU HAVE 1288?
09:33AM 9 MR. BOSTIC: ONE MOMENT, YOUR HONOR.
09:33AM 10 1287 IS A MORE COMPLETE VERSION OF THIS CHAIN. IT MIGHT
09:33AM 11 INCLUDE THE ADDITIONAL CONTENT THAT DEFENSE COUNSEL WOULD LIKE
09:33AM 12 TO SEE.
09:33AM 13 THE COURT: MR. COOPERSMITH, COULD YOU DRAW YOUR
09:33AM 14 ATTENTION TO THAT.
09:33AM 15 MR. COOPERSMITH: YES, YOUR HONOR, I HAVE
09:33AM 16 EXHIBIT 1287 AS WELL. THAT'S SORT OF A DIFFERENT BRANCH OF THE
09:33AM 17 STRING, BUT IT DOES NOT CONTAIN ALL OF THE INFORMATION THAT
09:33AM 18 1288 DOES.
09:33AM 19 MR. BOSTIC: YOUR HONOR, I WOULD PROPOSE ADMITTING
09:33AM 20 1289 AT THIS TIME. IF THE DEFENSE WOULD LIKE TO SUBMIT INTO
09:33AM 21 EVIDENCE A MORE COMPLETE COPY, I THINK THE GOVERNMENT WON'T
09:34AM 22 OBJECT.
09:34AM 23 MR. COOPERSMITH: YOUR HONOR, I THINK RULE 106 SAYS
09:34AM 24 THAT WE ARE PERMITTED TO HAVE IT DONE AT THIS TIME. THAT IS
09:34AM 25 WHAT THE RULES SAYS.

09:34AM 1 THE COURT: IS THAT WHAT YOU WOULD LIKE,
09:34AM 2 MR. COOPERSMITH?
09:34AM 3 MR. COOPERSMITH: YES.
09:34AM 4 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'LL
09:34AM 5 TAKE A BRIEF RECESS WHILE I LOOK AT THIS DOCUMENT. WE'LL TAKE
09:34AM 6 A BRIEF RECESS, PARDON ME, AND WE'LL RECONVENE IN JUST A
09:34AM 7 MOMENT.
09:34AM 8 AND IF SOMEONE COULD HAND ME 1288, PLEASE.
09:34AM 9 (JURY OUT AT 9:34 A.M.)
09:34AM 10 THE COURT: THANK YOU, MS. CHEUNG.
09:34AM 11 IF YOU COULD LEAVE PLEASE FOR JUST A MOMENT.
09:35AM 12 THE RECORD SHOULD REFLECT THAT THE JURY HAS LEFT THE
09:35AM 13 COURTROOM.
09:35AM 14 PLEASE BE SEATED. THANK YOU.
09:35AM 15 MR. COOPERSMITH: WE ARE LOOKING FOR A COPY,
09:35AM 16 YOUR HONOR.
09:35AM 17 THE COURT: AND MS. CHEUNG HAS LEFT THE COURTROOM AS
09:35AM 18 WELL. THANK YOU.
09:35AM 19 MR. COOPERSMITH: THANK YOU, YOUR HONOR.
09:35AM 20 (PAUSE IN PROCEEDINGS.)
09:35AM 21 MR. COOPERSMITH: YOUR HONOR, I HAVE A COPY OF
09:35AM 22 EXHIBIT 1288.
09:35AM 23 I THINK THE GOVERNMENT HAS ONE; IS THAT RIGHT?
09:35AM 24 MR. BOSTIC: I DON'T HAVE A COPY OF 1288 WITH ME.
09:35AM 25 MR. COOPERSMITH: OKAY.

09:35AM 1 THE COURT: WOULD YOU LIKE US TO MAKE COPIES OF
09:35AM 2 YOURS OR DO YOU HAVE A COPY MACHINE IN YOUR ROOM?

09:36AM 3 MR. BOSTIC: I CAN ALSO TAKE A BRIEF LOOK,
09:36AM 4 YOUR HONOR, BEFORE THE COPY IS HANDED UP TO THE COURT.

09:36AM 5 THE COURT: WELL, HE SHOULD SHARE.

09:36AM 6 MR. COOPERSMITH: I FOUND TWO COPIES, YOUR HONOR.

09:36AM 7 THE COURT: WHY DON'T YOU SHARE ONE WITH MR. BOSTIC,
09:36AM 8 PLEASE.

09:37AM 9 (PAUSE IN PROCEEDINGS.)

09:37AM 10 THE COURT: MR. BOSTIC, HAVE YOU HAD OCCASION TO
09:37AM 11 LOOK AT 1288?

09:37AM 12 MR. BOSTIC: YES. THANK YOU, YOUR HONOR.

09:37AM 13 THE GOVERNMENT OPPOSES ADMITTING THIS VERSION INSTEAD OF
09:37AM 14 THE VERSION PROVIDED BY THE GOVERNMENT.

09:37AM 15 FOR ONE THING, RULE 106 DOES NOT AUTOMATICALLY REQUIRE
09:37AM 16 THAT THE LONGEST VERSION OF ANY GIVEN EMAIL CHAIN BE ADMITTED.
09:37AM 17 IT'S A RULE THAT REQUIRES THAT COMPLETE VERSIONS OF EXHIBITS BE
09:37AM 18 ADMITTED WHERE FAIRNESS SO REQUIRES.

09:37AM 19 I DON'T THINK IT'S UNFAIR TO ADMIT 1289 OR 1287 INSTEAD OF
09:37AM 20 1288.

09:37AM 21 AND CERTAINLY IT WOULD BE AN ACCEPTABLE SOLUTION IF IT
09:37AM 22 WERE UNFAIR TO SIMPLY ADMIT 1288 IN ADDITION.

09:37AM 23 BUT LOOKING AT THE CONTENT OF 1288, I SEE SOME HEARSAY
09:37AM 24 PROBLEMS WITH THE PORTIONS THAT ARE UNIQUE TO THIS VERSION OF
09:38AM 25 THE EMAIL CHAIN.

09:38AM 1 SO THE GOVERNMENT WOULD OPPOSE THE ADMISSION OF 1288 IN
09:38AM 2 ANY CASE.

09:38AM 3 THE COURT: MR. COOPERSMITH.

09:38AM 4 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

09:38AM 5 SO AS THE COURT KNOWS, RULE 106 REQUIRES OTHER DOCUMENTS
09:38AM 6 TO BE CONSIDERED AND IN FAIRNESS THEY OUGHT TO BE CONSIDERED AT
09:38AM 7 THE SAME TIME.

09:38AM 8 IF YOU LOOK AT EXHIBIT 1289 THAT THE GOVERNMENT OFFERED,
09:38AM 9 MS. CHEUNG SAYS THAT CERTAIN QC FAILED, AND THEN THERE'S SOME
09:38AM 10 MORE DISCUSSION.

09:38AM 11 AND THE VERY TOP EMAIL IS FROM MR. BALWANI WHERE HE SAYS
09:38AM 12 THAT THIS IS BEYOND UNACCEPTABLE PERFORMANCE; RIGHT?

09:38AM 13 IF YOU GO TO EXHIBIT 1288, YOU CAN SEE AT THE BOTTOM OF
09:38AM 14 THE PAGE, NEAR THE BOTTOM OF THE PAGE.

09:38AM 15 THE COURT: WHICH PAGE?

09:38AM 16 MR. COOPERSMITH: I'M SORRY, ON EXHIBIT 1288 THE
09:38AM 17 BOTTOM OF THE FIRST PAGE YOU CAN SEE THE SAME EMAIL FROM
09:39AM 18 MR. BALWANI, "THIS IS BEYOND UNACCEPTABLE PERFORMANCE."

09:39AM 19 BUT THEN IT GOES ON. AND THERE'S AN EMAIL FROM DR. DOSHI,
09:39AM 20 THERE'S AN EMAIL FROM MS. HOLMES, AND THERE'S AN EMAIL FROM
09:39AM 21 DR. YOUNG THAT SAYS THAT "THIS HAS BEEN RESOLVED."

09:39AM 22 THERE'S ANOTHER EMAIL THAT SAYS -- THERE'S ANOTHER EMAIL
09:39AM 23 FROM DANIEL YOUNG ON NOVEMBER 30TH, 2013, ON THE TOP THAT SAYS,
09:39AM 24 "ONE OF THE QC RUNS PASSED AFTER THE SOP WAS FOLLOWED
09:39AM 25 APPROPRIATELY."

09:39AM 1 AND THEN THERE'S AN EMAIL FROM MS. HOLMES, "WE NEED TO
09:39AM 2 RETRAIN."

09:39AM 3 SO THAT IS THE PART OF IT.

09:39AM 4 WHAT THE GOVERNMENT IS TRYING TO DO, IT APPEARS, IS LEAVE
09:39AM 5 THE IMPRESSION THAT WITH THIS EXHIBIT THERE WAS A QC FAILURE
09:39AM 6 AND THEN NOTHING ELSE HAPPENED.

09:39AM 7 BUT IN FAIRNESS, I THINK THE ENTIRE EPISODE HERE IS THAT,
09:39AM 8 YES, MS. CHEUNG REPORTED THAT, BUT APPARENTLY DR. YOUNG FELT
09:39AM 9 THAT SHE DIDN'T FOLLOW THE SOP PROPERLY. SO WE THINK THAT
09:40AM 10 OUGHT TO BE CONSIDERED AT THE SAME TIME IF THE GOVERNMENT IS
09:40AM 11 GOING TO OFFER THIS EXHIBIT.

09:40AM 12 MR. BOSTIC: SO, YOUR HONOR, I THINK THAT PART OF
09:40AM 13 THE DEFENSE'S OBJECTION MIGHT HAVE BEEN SOLVED WITH MY NEXT
09:40AM 14 EXHIBIT BECAUSE I WAS GOING TO GO TO 1287 NEXT.

09:40AM 15 BUT MR. COOPERSMITH DOESN'T HAVE THE BENEFIT OF A COPY OF
09:40AM 16 MY OUTLINE, OF COURSE.

09:40AM 17 1287 INCLUDES FOLLOW-ON DISCUSSION AFTER THE EMAIL FROM
09:40AM 18 MR. BALWANI WHERE HE SAYS, "THIS IS BEYOND UNACCEPTABLE
09:40AM 19 PERFORMANCE," SO IT AVOIDS LEAVING THE JURY WITH THE IMPRESSION
09:40AM 20 THAT THERE WAS NO FURTHER DISCUSSION.

09:40AM 21 AND, IN FACT, EXHIBIT 1287, IF I'M READING IT CORRECTLY,
09:40AM 22 IS A MORE COMPLETE VERSION AND EXPLANATION OF WHAT HAPPENED
09:40AM 23 HERE. IT SPECIFICALLY INCLUDES A REQUEST FROM MS. HOLMES TO
09:40AM 24 EXPLAIN WHAT THE RESOLUTION WAS, AND SURAJ SAKSENA RESPONDS
09:40AM 25 AGAIN IN EXHIBIT 1287 EXPLAINING THAT TWO OUTLIERS HAD TO BE

09:40AM 1 MANUALLY REMOVED TO PASS QC.

09:41AM 2 SO THAT WAS THE FORM OF THAT RESOLUTION.

09:41AM 3 I THINK THAT ADMITTING EXHIBIT 1287 PROVIDES THE FULL
09:41AM 4 PICTURE HERE AND AVOIDS ANY 106 CONCERNS AND OBVIATES THE NEED
09:41AM 5 FOR 1288.

09:41AM 6 MR. COOPERSMITH: YOUR HONOR, I DON'T THINK THAT'S
09:41AM 7 CORRECT.

09:41AM 8 BY THE WAY, WE WILL TAKE A COPY OF MR. BOSTIC'S OUTLINE IF
09:41AM 9 HE WOULD LIKE TO SHARE THAT.

09:41AM 10 (LAUGHTER.)

09:41AM 11 MR. COOPERSMITH: BUT REGARDING 1287, THAT I'M NOT
09:41AM 12 GOING TO HAVE AN OBJECTION TO WHEN AND IF MR. BOSTIC OFFERS IT,
09:41AM 13 BUT IT STILL IS NOT GOING TO SOLVE THE PROBLEM.

09:41AM 14 AND THE REASON IS THAT ALTHOUGH IT DOES STILL HAVE SOME
09:41AM 15 ADDITIONAL INFORMATION ON EXHIBIT 1287, BEYOND WHAT IS ON 1289,
09:41AM 16 IT STILL DOES NOT HAVE THE INFORMATION ON 1288, WHICH IS THAT
09:41AM 17 "ONE OF THE QC RUNS PASSED AFTER THE SOP WAS FOLLOWED
09:41AM 18 APPROPRIATELY," AND THAT'S THAT TOP EMAIL ON NOVEMBER 30TH FROM
09:41AM 19 DR. YOUNG, AS WELL AS THE "WE NEED TO RETRAIN" EMAIL.

09:41AM 20 SO I THINK THE COMPLETE SET WOULD BE 1287, 1288, AND 1289
09:42AM 21 AND THE OMISSION OF GOVERNMENT'S EXHIBIT 1288 IS WHERE THE 106
09:42AM 22 PROBLEM LIES.

09:42AM 23 THE COURT: THE EMAIL YOU REFERENCED TO
09:42AM 24 DANIEL YOUNG, IT'S AT THE TOP OF PAGE 1 OF 1288, IS THIS WHAT
09:42AM 25 YOU'RE SEEKING TO -- THIS IS WHAT YOU WOULD LIKE TO GET IN?

09:42AM 1 THIS IS AN EMAIL TO DANIEL YOUNG CC'D INDIVIDUALS,
09:42AM 2 INCLUDING YOUR CLIENT, AND THIS IS FROM ELIZABETH HOLMES
09:42AM 3 NOVEMBER 30TH, 2013, AT 7:34 P.M., IS THAT WHAT YOU WANT IN?

09:42AM 4 MR. COOPERSMITH: THAT'S ONE OF THE EMAILS,
09:42AM 5 YOUR HONOR.

09:42AM 6 AND THEN IN ADDITION, YOUR HONOR, BELOW THAT ON
09:42AM 7 EXHIBIT 1288 YOU CAN SEE THAT NOVEMBER 30TH EMAIL AT 11:27 A.M.
09:42AM 8 FROM DANIEL YOUNG, AND THAT'S THE ONE THAT SAYS, "ONE OF THE QC
09:43AM 9 RUNS PASSED AFTER THE SOP WAS FOLLOWED."

09:43AM 10 THE COURT: 11:27 A.M.? I'M SORRY.

09:43AM 11 MR. COOPERSMITH: YES, YOUR HONOR, 11:27 A.M. IT'S
09:43AM 12 NEAR THE TOP OF PAGE 1 OF EXHIBIT 1288.

09:43AM 13 THE COURT: I SEE.

09:43AM 14 MR. COOPERSMITH: FINALLY BELOW THAT THERE'S AN
09:43AM 15 EMAIL THAT SAYS, "THIS HAS BEEN RESOLVED," THAT'S THE
09:43AM 16 11:25 A.M. EMAIL THAT IS BELOW THAT.

09:43AM 17 THAT PARTICULAR ONE ALSO APPEARS ON 1287. SO THAT WOULD
09:43AM 18 BE SOLVED, AS MR. BOSTIC SAID, BY ADMITTING 1287, BUT IT'S
09:43AM 19 THOSE TWO TOP EMAILS ON 1288 THAT WOULD STILL NEED TO BE PUT
09:43AM 20 INTO THE RECORD UNDER 106.

09:43AM 21 MR. BOSTIC: SO I THINK THE QUESTION FOR THE COURT,
09:43AM 22 YOUR HONOR, IS WHETHER THOSE TWO REMARKS ARE ADMISSIBLE OR
09:43AM 23 WHETHER THEY'RE -- THE FIRST IS WHETHER THEY'RE REQUIRED UNDER
09:43AM 24 106, WHICH I THINK THEY ARE NOT, AND SECOND, MAYBE MORE
09:43AM 25 IMPORTANTLY, WHETHER THEY'RE EVEN ADMISSIBLE AS HEARSAY.

09:43AM 1 I CAN SEE WHY THE DEFENSE WANTS TO KNOW ABOUT THOSE TWO
09:44AM 2 REMARKS. DANIEL YOUNG EXPRESSING THE OPINION THAT THE SOP
09:44AM 3 WASN'T BEING FOLLOWED APPROPRIATELY BEFORE AND MS. HOLMES'S
09:44AM 4 OPINION THAT RETRAINING WAS NECESSARY.

09:44AM 5 BUT THOSE REMARKS, THOSE OPINIONS BY NONTESTIFYING
09:44AM 6 INDIVIDUALS, THESE OUT-OF-COURT STATEMENTS, AREN'T ADMISSIBLE.

09:44AM 7 MR. COOPERSMITH: YOUR HONOR, TWO THINGS ABOUT THAT
09:44AM 8 HEARSAY ISSUE.

09:44AM 9 FIRST OF ALL, MR. BOSTIC DID A NICE JOB OF LAYING THE
09:44AM 10 EMAIL BUSINESS RECORDS PREDICATE WITH MS. HOLMES, AND I THINK
09:44AM 11 THE SAYING WHAT IS GOOD FOR THE GOOSE IS GOOD FOR THE GANDER AS
09:44AM 12 THEY SAY, AND I THINK THOSE ARE ALL BUSINESS RECORDS, AND I
09:44AM 13 DON'T THINK THAT'S A PROBLEM.

09:44AM 14 SECOND, YOUR HONOR, THIS IS A THERANOS DOCUMENT, AND I
09:44AM 15 BELIEVE WE HAVE A WRITTEN STIPULATION THAT THESE ARE AUTHENTIC,
09:44AM 16 SO THAT WOULD, OF COURSE, SOLVE THE AUTHENTICITY PROBLEM.

09:44AM 17 AND FINALLY, YOUR HONOR, I DON'T BELIEVE THAT WHEN THERE'S
09:44AM 18 A NEED FOR FAIRNESS UNDER 106, THAT THAT IS -- THE HEARSAY RULE
09:44AM 19 PREVENTS ADMISSION OF IT EVEN IF IT WERE HEARSAY.

09:45AM 20 THE REASON IS, 106 IS ABOUT WHETHER IN FAIRNESS THE
09:45AM 21 DOCUMENT OUGHT TO BE PRESENTED, AND IT'S NOT A MATTER OF
09:45AM 22 HEARSAY. THE CASE I WOULD CITE TO THE COURT ON THAT IS
09:45AM 23 UNITED STATES VERSUS LOPEZ, 4 F.4TH 706, NINTH CIRCUIT 2021, SO
09:45AM 24 A FAIRLY RECENT CASE. SO IT'S A MATTER OF WHAT IS FAIR AS
09:45AM 25 OPPOSED TO WHAT'S HEARSAY.

09:45AM 1 SO FOR THAT REASON --

09:45AM 2 THE COURT: THE COURT STILL HAS TO CONSIDER THE
09:45AM 3 ADMISSIBILITY UNDER THE HEARSAY RULE THOUGH.

09:45AM 4 MR. COOPERSMITH: I THINK THE COURT HAS TO CONSIDER
09:45AM 5 THE ADMISSIBILITY, BUT THAT IS NOT A BARRIER TO ADMITTING THE
09:45AM 6 DOCUMENT.

09:45AM 7 BUT AS I ALSO SAID, YOUR HONOR, IT'S NOT, IT'S NOT HEARSAY
09:45AM 8 BECAUSE OF THE BUSINESS RECORDS ISSUE, AND IT JUST SEEMS LIKE
09:45AM 9 THIS IS SOMETHING THAT NEEDS TO BE ADMITTED IN FAIRNESS AS
09:45AM 10 RULE 106 SAYS.

09:45AM 11 MR. BOSTIC: I DISAGREE ON THE BUSINESS RECORDS
09:45AM 12 POINT, YOUR HONOR.

09:45AM 13 THE COMMUNICATIONS THAT HAVE BEEN ADMITTED SO FAR ARE
09:45AM 14 BUSINESS RECORDS BECAUSE THEY COMPRISE THE WAY THAT EMPLOYEES
09:46AM 15 COORDINATED THE ONGOING BUSINESS AND OPERATIONS OF THERANOS.

09:46AM 16 THESE TWO REMARKS ARE OUTSIDE OF THAT PROCESS. THEY'RE
09:46AM 17 NOT NECESSARY TO THE PROCESSING OF THE SAMPLE. THEY DON'T
09:46AM 18 DOCUMENT WHAT HAPPENED WITH THE SAMPLE.

09:46AM 19 INSTEAD, THEY EXPRESS THE VIEWS OF TWO INDIVIDUALS WHO
09:46AM 20 AREN'T TESTIFYING, WHO AREN'T UNDER OATH, ABOUT THE APPROPRIATE
09:46AM 21 WAY TO DO THINGS AND WHAT NEEDED TO BE DONE NEXT TO SOLVE THE
09:46AM 22 ISSUE, AND THAT'S WHAT MAKES THEM INADMISSIBLE HEARSAY.

09:46AM 23 MR. COOPERSMITH: YOUR HONOR, ONE MORE THING ABOUT
09:46AM 24 THAT.

09:46AM 25 EVEN IF THE COURT WERE TO VIEW THIS AS HEARSAY, AS I JUST

09:46AM 1 SAID IS NOT THE CASE OR SHOULD NOT BE THE CASE, IT WOULD STILL
09:46AM 2 BE ADMISSIBLE FOR MR. BALWANI'S STATE OF MIND, AND IT'S A
09:46AM 3 NONHEARSAY PURPOSE.

09:46AM 4 BECAUSE AS YOU CAN SEE, HE IS ON THE EMAIL STRINGS. HE'S
09:46AM 5 BOTH ON -- HE'S ON ALL OF THE EMAIL STRINGS THAT I'M SUBMITTING
09:46AM 6 TO THE COURT SHOULD BE ADMITTED ALONG WITH THE OTHER EXHIBITS,
09:46AM 7 AND IT WOULD BE ADMISSIBLE FOR THAT NONHEARSAY PURPOSE AS WELL.

09:46AM 8 THE COURT: STATE OF MIND AS TO WHAT?

09:47AM 9 MR. COOPERSMITH: AND MR. BALWANI'S STATE OF MIND AS
09:47AM 10 TO UNDERSTANDING THAT MS. CHEUNG, THE WITNESS, HAS SAID IN THE
09:47AM 11 EMAIL THAT IN HER VIEW THERE WAS A QC RUN PROBLEM, AND CLEARLY
09:47AM 12 THE REASON THAT THE GOVERNMENT LIKES THAT IS BECAUSE THEY WANT
09:47AM 13 TO SHOW QUALITY CONTROL FAILURE.

09:47AM 14 THE COURT: IS IT STATE OF MIND AS TO HIS NOTICE OF
09:47AM 15 THESE ISSUES?

09:47AM 16 MR. COOPERSMITH: YEAH, THAT HE UNDERSTANDS THAT
09:47AM 17 THERE WAS A QC ISSUE THAT MS. CHEUNG RAISED, AND THEN HIS
09:47AM 18 SCIENTIFIC TEAM CONCLUDED THAT THE PROBLEM HAD BEEN RESOLVED,
09:47AM 19 AND IT WAS A PROBLEM WITH WHETHER MS. CHEUNG FOLLOWED THE SOP.

09:47AM 20 AND THAT'S NOTICE TO MR. BALWANI OF WHAT HAPPENED HERE,
09:47AM 21 WHICH IS DIFFERENT THAN THE HEARSAY RULE.

09:47AM 22 AND AS I SAID, IT SHOULDN'T BE HEARSAY IN ANY EVENT.

09:47AM 23 THE COURT: WELL, I THINK IT IS HEARSAY. WE AGREE
09:47AM 24 IT'S HEARSAY.

09:47AM 25 THE QUESTION IS WHETHER OR NOT IT'S ADMISSIBLE

09:47AM 1 NOTWITHSTANDING. WOULD YOU AGREE WITH THAT?

09:47AM 2 MR. COOPERSMITH: IT WOULD BE ADMISSIBLE UNDER A
09:47AM 3 HEARSAY EXCEPTION.

09:47AM 4 AND FOR THAT MATTER, YOUR HONOR, MUCH OF THESE DOCUMENTS
09:47AM 5 THAT WE HAVE SEEN SO FAR THIS MORNING THAT MR. BOSTIC IS TRYING
09:48AM 6 TO ADMIT ARE HEARSAY, BUT THEY'RE AT TIMES ADMISSIBLE UNDER THE
09:48AM 7 HEARSAY EXCEPTION, IN PARTICULAR 803(6).

09:48AM 8 THE COURT: RIGHT. I DON'T WANT TO GET INTO
09:48AM 9 LINGUISTICS, BUT IT'S HEARSAY.

09:48AM 10 THE QUESTION IS, IS THERE AN EXCEPTION?

09:48AM 11 MR. COOPERSMITH: IS THERE --

09:48AM 12 THE COURT: YOU'RE NOT ADVOCATING THAT IT'S NOT
09:48AM 13 HEARSAY SO IT SHOULD COME IN AS NONHEARSAY.

09:48AM 14 MR. COOPERSMITH: THAT'S TRUE, YOUR HONOR.

09:48AM 15 WELL, RIGHT. IT'S HEARSAY AND THERE WOULD EITHER BE AN
09:48AM 16 EXCEPTION, WHICH WOULD BE THE BUSINESS RECORDS EXCEPTION, OR
09:48AM 17 THERE'S A NONHEARSAY PURPOSE, THAT'S ANOTHER REASON IT COULD
09:48AM 18 COME IN, AND THEN THERE'S, OF COURSE, THE OVERLAY OF RULE 106.

09:48AM 19 THE COURT: SO LET ME ASK, WHAT ABOUT THE BUSINESS
09:48AM 20 RECORDS EXCEPTION? YOU TOLD ME ABOUT A STIPULATION.

09:48AM 21 HAVE THE PARTIES STIPULATED TO ANY TYPE OF A BUSINESS
09:48AM 22 RECORD? THERE HASN'T BEEN A FOUNDATION LAID AS TO THAT.

09:48AM 23 MR. COOPERSMITH: RIGHT. BUT TO BE CLEAR,
09:48AM 24 YOUR HONOR, WHAT THE PARTIES STIPULATED TO IS AUTHENTICITY,
09:48AM 25 OKAY? THERE'S STILL ROOM FOR EITHER MR. BOSTIC OR OUR TEAM TO

09:48AM 1 ARGUE THAT SOMETHING IS HEARSAY, YOU KNOW, BUT THE ISSUE IS
09:48AM 2 AUTHENTICITY.

09:48AM 3 SO I JUST WANTED TO MAKE SURE THAT THAT WASN'T AN ISSUE
09:48AM 4 BECAUSE WE HAVE A STIPULATION THAT THIS TYPE OF DOCUMENT WITH A
09:49AM 5 CERTAIN BATES NUMBER IS AUTHENTIC, SO WE KNOW IT'S AN ACTUAL
09:49AM 6 GOVERNMENT'S EMAIL.

09:49AM 7 I'M NOT SAYING THAT IT SOLVES ALL OF THE EVIDENTIARY
09:49AM 8 PROBLEMS, BUT IT GOES SOME OF THE WAY BECAUSE WE DON'T HAVE
09:49AM 9 THAT. WE KNOW IT'S AN EMAIL DULY RETRIEVED FROM THE THERANOS
09:49AM 10 SERVER THAT WAS ACTUALLY, AS MR. BOSTIC POINTED OUT WITH THE
09:49AM 11 WITNESS, IT'S SOMETHING THAT THEY DO IN THE REGULAR COURSE OF
09:49AM 12 BUSINESS, THEY KEEP EMAILS.

09:49AM 13 THE COURT: WELL, HE DIDN'T DO THAT, DID HE? HE
09:49AM 14 HASN'T DONE THAT.

09:49AM 15 MR. COOPERSMITH: CLOSE.

09:49AM 16 THE COURT: MR. BOSTIC.

09:49AM 17 MR. BOSTIC: THERE'S NO OBJECTION FROM THE
09:49AM 18 GOVERNMENT ON THE BASIS OF AUTHENTICITY, YOUR HONOR.

09:49AM 19 WHERE THE PARTIES PART WAYS IS WHETHER 106 REQUIRES 1288
09:49AM 20 TO COME IN AT ALL, AND CERTAINLY WHETHER IT REQUIRES THE
09:49AM 21 GOVERNMENT TO ADMIT 1288, AND SEPARATELY, WHETHER THESE TWO
09:49AM 22 REMARKS, WHICH ARE DIFFERENT FROM THE KINDS OF COMMUNICATIONS
09:49AM 23 WE TYPICALLY VIEW AS BUSINESS RECORDS, WHETHER THEY'RE
09:49AM 24 ADMISSIBLE.

09:49AM 25 THE COURT: RIGHT. OKAY.

09:49AM 1 ANYTHING FURTHER?

09:49AM 2 MR. COOPERSMITH: NO, YOUR HONOR. I THINK THE COURT

09:49AM 3 HAS OUR POSITION.

09:49AM 4 THE COURT: OKAY. ALL RIGHT. THANK YOU.

09:50AM 5 WELL, I'M NOT GOING TO, I'M NOT GOING TO FORCE MR. BOSTIC

09:50AM 6 TO INTRODUCE 1288 IF HE DOESN'T WANT TO DO SO.

09:50AM 7 I'LL ALLOW -- I'LL TAKE YOUR MOTION. IT SOUNDS LIKE YOU

09:50AM 8 WOULD LIKE TO ADMIT 1288 AT SOME POINT IN TIME SHOULD YOU

09:50AM 9 DESIRE TO CROSS-EXAMINE THIS WITNESS.

09:50AM 10 MR. COOPERSMITH: YES, YOUR HONOR.

09:50AM 11 THE COURT: RIGHT. SO THANK YOU FOR THE HEADS UP ON

09:50AM 12 THAT. AND I'VE GOT THIS.

09:50AM 13 SO I'M NOT GOING TO FORCE MR. BOSTIC TO INTRODUCE THIS IF

09:50AM 14 HE DOESN'T WANT TO, INCLUDING FOR THE 106 PURPOSES.

09:50AM 15 BUT IF YOU WANT TO CROSS-EXAMINE THIS IF YOU FEEL IT'S

09:50AM 16 APPROPRIATE, LET'S TAKE IT UP THEN.

09:50AM 17 MR. COOPERSMITH: OKAY. OUR POSITION IS OBVIOUSLY

09:50AM 18 WE CAN, AND WE'LL TAKE IT UP AT THE TIME.

09:50AM 19 THE COURT: RIGHT. WELL, YOU CAN'T NOW BECAUSE

09:50AM 20 YOU'RE NOT EXAMINING.

09:50AM 21 MR. COOPERSMITH: THAT'S TRUE, YOUR HONOR.

09:50AM 22 THE COURT: SO WE'LL SEE WHAT HAPPENS.

09:50AM 23 IS THAT CLEAR?

09:50AM 24 MR. COOPERSMITH: I UNDERSTAND THE COURT'S RULING.

09:50AM 25 THE COURT: ALL RIGHT.

09:50AM 1 CAN WE BRING THE JURY IN THEN?

09:51AM 2 MR. BOSTIC: YES, YOUR HONOR.

09:51AM 3 THE COURT: ALL RIGHT.

09:52AM 4 (JURY IN AT 9:52 A.M.)

09:52AM 5 THE COURT: ALL RIGHT. THANK YOU.

09:52AM 6 PLEASE BE SEATED. WE'RE BACK ON THE RECORD.

09:52AM 7 OUR JURORS AND ALTERNATES ARE PRESENT.

09:53AM 8 MS. CHEUNG IS BACK ON THE STAND.

09:53AM 9 THANK YOU, LADIES AND GENTLEMEN.

09:53AM 10 MR. BOSTIC.

09:53AM 11 MR. BOSTIC: THANK YOU, YOUR HONOR.

09:53AM 12 Q. MS. CHEUNG, CAN I ASK YOU TO LOOK AT EXHIBIT 1287 IN YOUR

09:53AM 13 BINDER?

09:53AM 14 THE COURT: I'M SORRY TO INTERRUPT YOU. DID YOU

09:53AM 15 INTRODUCE 1289? I JUST WANT TO MAKE SURE --

09:53AM 16 MR. BOSTIC: I HAVE NOT, YOUR HONOR. THANK YOU.

09:53AM 17 I'M ACTUALLY GOING TO USE 1287 AS A SUBSTITUTE.

09:53AM 18 THE COURT: OKAY. THANK YOU.

09:53AM 19 BY MR. BOSTIC:

09:53AM 20 Q. MS. CHEUNG, DO YOU SEE EXHIBIT 1287 IN FRONT OF YOU?

09:53AM 21 A. YES.

09:53AM 22 Q. AND IS THAT AN EMAIL FROM NOVEMBER 30TH, 2013, RELATING TO

09:53AM 23 A QUALITY CONTROL ISSUE AT THERANOS?

09:53AM 24 A. YES.

09:53AM 25 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS

09:53AM 1 EXHIBIT 1287.

09:53AM 2 MR. COOPERSMITH: YOUR HONOR, TWO OBJECTIONS.

09:53AM 3 ONE IS THE SAME 106 OBJECTION FOR THE RECORD.

09:53AM 4 THE OTHER IS THAT IT APPEARS THAT THE TOP EMAIL, THAT TOP
09:54AM 5 EMAIL DON'T HAVE THE WITNESS AS ONE OF THE RECIPIENTS, AND FOR
09:54AM 6 THAT REASON OUR OBJECTION IS HEARSAY.

09:54AM 7 THE COURT: MR. BOSTIC.

09:54AM 8 MR. BOSTIC: YOUR HONOR, IF I COULD ATTEMPT TO LAY A
09:54AM 9 FOUNDATION FOR THOSE TOP TWO EMAILS AS A BUSINESS RECORD.

09:54AM 10 THE COURT: OKAY.

09:54AM 11 BY MR. BOSTIC:

09:54AM 12 Q. MS. CHEUNG, LET ME ASK YOU ABOUT A FEW PEOPLE WHO APPEAR
09:54AM 13 ON THIS EMAIL IF I COULD?

09:54AM 14 A. OKAY.

09:54AM 15 Q. FIRST, THE EMAIL CHAIN BEGINS WITH AN EMAIL FROM YOU ON
09:54AM 16 NOVEMBER 29TH, 2013.

09:54AM 17 DO YOU SEE THAT ON PAGE 2?

09:54AM 18 A. YES.

09:54AM 19 Q. AND CAN YOU IDENTIFY FOR US, PLEASE, THE PEOPLE IN THE
09:54AM 20 CC LINE? WHO DID YOU SEND THIS EMAIL TO?

09:54AM 21 A. SO I SENT THIS EMAIL TO SHARADA SIVARAMAN, WHO IS THE HEAD
09:55AM 22 OF THE ELISA DEPARTMENT; RAN HU, H-U, WHO IS A TEAM LEAD IN THE
09:55AM 23 ELISA DEPARTMENT; SAMARTHA ANEKAL, WHO IS A HEAD OF THE
09:55AM 24 HARDWARE TEAM, IT WAS LIKE THE SYSTEMS INTEGRATED TEAM; AND
09:55AM 25 THEN NISHIT DOSHI, WHO WAS PART OF THE CYTOMETRY TEAM;

09:55AM 1 SURAJ SAKSENA, WHO AT THAT TIME WAS WORKING IN THE ELISA TEAM
09:55AM 2 AS WELL BUT WAS PART OF BINDERS AND A PRODUCTION TEAM; AND THEN
09:55AM 3 CLIA LAB, WHICH IS ESSENTIALLY ALL OF THE CLINICAL LABORATORY
09:55AM 4 PERSONNEL.

09:55AM 5 Q. AND DID YOU REGULARLY USE EMAIL TO COMMUNICATE WITH THOSE
09:55AM 6 INDIVIDUALS ABOUT ISSUES IN THE THERANOS LAB?

09:55AM 7 A. YES.

09:55AM 8 AND THERE'S ONE OTHER PERSON THAT I SENT THIS TO AND THE
09:56AM 9 MAIN PERSON IS NORMANDY 911.

09:56AM 10 Q. I'D LIKE TO ASK YOU ABOUT THAT AS WELL, BUT LET'S HOLD OFF
09:56AM 11 ON THAT FOR A MOMENT.

09:56AM 12 A. OKAY.

09:56AM 13 Q. YOUR EMAILS WITH THESE INDIVIDUALS, WHAT KINDS OF ISSUES
09:56AM 14 AT THERANOS WOULD REQUIRE DISCUSSION BY EMAIL WITH THIS SET OF
09:56AM 15 PEOPLE?

09:56AM 16 A. IF THERE WERE QUALITY CONTROL FAILURES, IF THERE WAS AN
09:56AM 17 ISSUE IN PATIENT TESTING OR PROCESSING OR SOME SORT OF LAB
09:56AM 18 FAILURE.

09:56AM 19 Q. AND DID THIS GROUP OF PEOPLE ROUTINELY COMMUNICATE BY
09:56AM 20 EMAIL ABOUT ISSUES LIKE QUALITY CONTROL FAILURES?

09:56AM 21 A. YES.

09:56AM 22 Q. AND WERE THOSE FOR THE PURPOSE OF DOCUMENTING THOSE
09:56AM 23 FAILURES AND ADDRESSING THEM?

09:56AM 24 A. YES.

09:56AM 25 Q. AND WAS IT IMPORTANT FOR THE PEOPLE IN THAT GROUP WHO SENT

09:56AM 1 THOSE EMAILS TO BE ACCURATE IN THE DETAILS THAT THEY CONVEYED
09:56AM 2 BY EMAIL?

09:56AM 3 A. YES.

09:56AM 4 Q. AND WERE EMAILS BETWEEN MEMBERS OF THIS GROUP ABOUT
09:56AM 5 QUALITY CONTROL FAILURES PRESERVED AT THERANOS SO THAT THEY
09:56AM 6 COULD BE REFERRED BACK TO LATER IF NEEDED?

09:57AM 7 A. YES.

09:57AM 8 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS
09:57AM 9 EXHIBIT 1287.

09:57AM 10 MR. COOPERSMITH: SAME OBJECTION AS TO THE EMAILS
09:57AM 11 THAT DO NOT INCLUDE THE WITNESS AS ONE OF THE RECIPIENTS OR
09:57AM 12 AUTHORS, WHICH THE COURT CAN SEE THE EXHIBIT, IT'S THE FIRST --
09:57AM 13 IT'S REALLY THE FIRST PAGE GOING TO THE TOP OF THE SECOND PAGE
09:57AM 14 OF EXHIBIT 1287 THERE THAT SAME PROBLEM ARISES.

09:57AM 15 SO OUR OBJECTION IS HEARSAY.

09:57AM 16 MR. BOSTIC: I THINK WE'RE TALKING ABOUT THE SAME
09:57AM 17 GROUP OF INDIVIDUALS, YOUR HONOR. I THINK THE FOUNDATION HAS
09:57AM 18 BEEN LAID.

09:57AM 19 THE COURT: CAN YOU JUST IDENTIFY FOR THE RECORD,
09:57AM 20 PERHAPS IF THIS WITNESS CAN, THE RECIPIENTS OF THESE EMAILS AND
09:57AM 21 WHETHER OR NOT THEY'RE SIMILAR.

09:57AM 22 MR. BOSTIC: YES, YOUR HONOR.

09:57AM 23 Q. MS. CHEUNG, IF I COULD DIRECT YOUR ATTENTION TO THE TOP
09:57AM 24 TWO EMAILS IN THIS CHAIN?

09:57AM 25 A. ON PAGE 2?

09:57AM 1 Q. ON PAGE 1, PLEASE.

09:57AM 2 A. ON PAGE 1.

09:58AM 3 Q. AND LOOKING AT THE TOP TWO EMAILS AND THE PEOPLE INCLUDED
09:58AM 4 ON THOSE EMAILS, ARE THOSE THE SAME INDIVIDUALS THAT YOU WERE
09:58AM 5 REFERRING TO WHO REGULARLY COMMUNICATED BY EMAIL ABOUT ISSUES
09:58AM 6 LIKE QC FAILURES AT THERANOS?

09:58AM 7 A. YES.

09:58AM 8 Q. AND LOOKING AT THE CONTENT OF THOSE TOP TWO EMAILS, DOES
09:58AM 9 THAT CONTENT DOCUMENT THE RESOLUTION OF A QC FAILURE AT
09:58AM 10 THERANOS?

09:58AM 11 A. YES.

09:58AM 12 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS THIS
09:58AM 13 DOCUMENT.

09:58AM 14 THE COURT: ALL RIGHT. THANK YOU.

09:58AM 15 MR. COOPERSMITH: YOUR HONOR, SAME OBJECTION.

09:58AM 16 HEARSAY.

09:58AM 17 BUT I WILL ALSO NOTE THAT IF MR. BOSTIC LAID A FOUNDATION
09:58AM 18 FOR EXHIBIT 1287, THEN I'D LIKE TO RENEW MY 106 OBJECTION TO
09:58AM 19 NOT ADMITTING 1288 BECAUSE IT'S THE SAME FOUNDATION THAT
09:58AM 20 MR. BOSTIC JUST LAID.

09:58AM 21 MR. BOSTIC: I DISAGREE, YOUR HONOR, BUT I THINK WE
09:58AM 22 CAN RESOLVE THAT IF AND WHEN THAT DOCUMENT IS OFFERED.

09:58AM 23 THE COURT: LET'S WAIT. I THINK I TOLD YOU A MOMENT
09:59AM 24 AGO WHAT WE WOULD DO WITH THAT, MR. COOPERSMITH.

09:59AM 25 MR. COOPERSMITH: OKAY. YES, YOUR HONOR, WE WILL

09:59AM 1 WAIT.

09:59AM 2 THE COURT: RIGHT. SO I'LL OVERRULE THE OBJECTION.

09:59AM 3 THIS IS ADMITTED, 803(6), THE FOUNDATION HAS BEEN LAID, AND IT

09:59AM 4 MAY BE PUBLISHED.

09:59AM 5 (GOVERNMENT'S EXHIBIT 1287 WAS RECEIVED IN EVIDENCE.)

09:59AM 6 MR. BOSTIC: THANK YOU, YOUR HONOR.

09:59AM 7 MS. WACHS, IF WE CAN PUT THAT ON THE SCREEN.

09:59AM 8 AND LET'S START WITH PAGE 2, PLEASE, AND ZOOM IN ON THE

09:59AM 9 BOTTOM OF THE DOCUMENT.

09:59AM 10 Q. MS. CHEUNG, DO YOU SEE NOW AN EMAIL FROM YOU TO A GROUP OF

09:59AM 11 INDIVIDUALS AT THERANOS IN LATE NOVEMBER OF 2013?

09:59AM 12 A. YES.

09:59AM 13 Q. AND THE SUBJECT LINE FOR THIS EMAIL IS "BOTH QC CONTROLS

09:59AM 14 FOR VITAMIN D DIDN'T PASS."

10:00AM 15 DO YOU SEE THAT?

10:00AM 16 A. YES.

10:00AM 17 Q. CAN YOU DESCRIBE WHAT WAS HAPPENING HERE AND WHAT PROMPTED

10:00AM 18 YOU TO SEND THIS EMAIL?

10:00AM 19 A. SO WE HAD RECEIVED A PATIENT SAMPLE, I BELIEVE THIS WAS

10:00AM 20 RIGHT AROUND THANKSGIVING, AND ESSENTIALLY PRIOR TO PROVIDING

10:00AM 21 THE VITAMIN D SAMPLE FOR THIS PATIENT I HAD TO RUN QUALITY

10:00AM 22 CONTROLS, WHICH WE HAD TWO QUALITY CONTROL MEASURES FOR THIS, A

10:00AM 23 SORT OF HIGH VALUE AND A LOW VALUE.

10:00AM 24 AND WHEN I HAD RUN THOSE QUALITY CONTROLS BEFORE RECEIVING

10:00AM 25 THE PATIENT SAMPLE, THEY FAILED. AND I TRIED TO RESOLVE THE

10:00AM 1 ISSUE TO SEE IF THERE WAS SOME SORT OF OBVIOUS MISTAKE THAT WAS
10:00AM 2 MADE, BUT I COULDN'T FIGURE OUT WHAT IT WAS.

10:00AM 3 SO I CONTACTED ESSENTIALLY THIS HELP LINE WHEN WE RAN INTO
10:00AM 4 THESE TYPES OF ISSUES AND NOTIFIED UPPER LEVEL MANAGEMENT TO
10:00AM 5 NOTIFY THEM TO HELP ME KIND OF RESOLVE WHAT THE ISSUE WAS AND
10:00AM 6 WHAT WAS THE NEXT COURSE OF ACTION.

10:00AM 7 Q. AND WHAT KIND OF ANALYZER WAS USED AT THERANOS AT THIS
10:01AM 8 TIME TO RUN THE VITAMIN D TEST?

10:01AM 9 A. SO THESE WERE EDISON DEVICES.

10:01AM 10 Q. SO BEFORE RUNNING THIS TEST YOU PERFORMED ONE OF THOSE QC
10:01AM 11 CHECKS THAT WE WERE JUST DISCUSSING ON THIS PARTICULAR EDISON?

10:01AM 12 A. THAT'S CORRECT.

10:01AM 13 Q. AND WAS THAT EDISON ABLE TO RETURN THE CORRECT ANSWER FOR
10:01AM 14 THE QC TEST?

10:01AM 15 A. NO. AND THIS IS A COLLECTION OF EDISONS FOR -- IT'S A SET
10:01AM 16 OF MACHINES.

10:01AM 17 Q. UNDERSTOOD.

10:01AM 18 A. YEAH.

10:01AM 19 Q. AND YOU SENT THIS EMAIL TO THE INDIVIDUALS THAT WE TALKED
10:01AM 20 ABOUT BEFORE, AS WELL AS IN THE TO LINE THERE'S AN ADDRESS THAT
10:01AM 21 SAYS NORMANDY 911.

10:01AM 22 DO YOU SEE THAT?

10:01AM 23 A. YES.

10:01AM 24 Q. AND WHAT WAS THE NORMANDY 911 EMAIL ADDRESS?

10:01AM 25 A. SO NORMANDY 911 WAS A KIND OF LIKE A LIST OR A BIG EMAIL

10:01AM 1 GROUP THAT WAS ESSENTIALLY A HELP LINE. IF YOU HAD SEEN ISSUES
10:01AM 2 IN THE LAB AND NEEDED THEM TO GET RESOLVED QUICKLY, YOU WOULD
10:02AM 3 CC OR SEND IT OVER TO NORMANDY 911 TO HELP RESOLVE ANY PRESSING
10:02AM 4 ISSUES RELATING TO PATIENT TESTING.

10:02AM 5 Q. AND YOU MENTIONED THAT THE LAB WAS DIVIDED INTO TWO
10:02AM 6 SECTIONS; IS THAT RIGHT?

10:02AM 7 A. THAT'S CORRECT.

10:02AM 8 Q. WAS THE NORMANDY SECTION THE ONE WITH THE
10:02AM 9 THERANOS-SPECIFIC EQUIPMENT OR THE COMMERCIAL EQUIPMENT?

10:02AM 10 A. IT WAS WITH THE THERANOS-SPECIFIC EQUIPMENT, SO THE EDISON
10:02AM 11 DEVICES, AND THEN ALSO THE COMMERCIALLY VIABLE ONES THAT WERE
10:02AM 12 MODIFIED.

10:02AM 13 Q. FOR THE PORTION OF THE LAB THAT HAD THE NON-THERANOS
10:02AM 14 REGULAR DEVICES, DO YOU KNOW WHETHER THERE WAS A SIMILAR 911
10:02AM 15 EMAIL ADDRESS?

10:02AM 16 A. NO.

10:02AM 17 Q. AND DO YOU NOT KNOW OR DO YOU HAVE A MEMORY?

10:02AM 18 A. I THINK WE JUST SENT THEM TO THE CLIA LAB. WE DIDN'T HAVE
10:02AM 19 A 911.

10:02AM 20 Q. GOING BACK TO THIS EXHIBIT, LET ME ASK YOU TO --

10:03AM 21 MS. WACHS, IF WE CAN ZOOM IN ON THE NEXT MESSAGE UP, STILL
10:03AM 22 ON PAGE 2 BUT RIGHT IN THE MIDDLE OF THE PAGE.

10:03AM 23 MS. CHEUNG, HERE'S ANOTHER EMAIL FROM A FEW HOURS LATER;
10:03AM 24 IS THAT CORRECT?

10:03AM 25 A. YES.

10:03AM 1 Q. AND YOU'RE PROVIDING AN UPDATE TO THAT SAME GROUP OF
10:03AM 2 INDIVIDUALS?

10:03AM 3 A. YES.

10:03AM 4 Q. AND WHAT HAS HAPPENED HERE? WHAT HAS CHANGED?

10:03AM 5 A. CAN I TAKE A MOMENT TO READ IT?

10:03AM 6 Q. OF COURSE. PLEASE.

10:03AM 7 (PAUSE IN PROCEEDINGS.)

10:03AM 8 THE WITNESS: SO ESSENTIALLY WHAT HAPPENED HERE, AS
10:03AM 9 I WAS SAYING, WHEN THE QC'S FAIL, YOU TRY TO FIND WHAT THE
10:03AM 10 ISSUE IS AND IMPLEMENT A CORRECTIVE ACTION.

10:03AM 11 SO HERE I WAS TRYING TO SEE IF IT WAS THE CHEMICALS THAT
10:03AM 12 WE USED TO RUN THE TEST THAT WAS HAVING A PARTICULAR ISSUE.

10:03AM 13 I CHANGED THE CHEMICALS. IT WAS STILL FAILING.

10:03AM 14 I CHANGED TO A WHOLE NEW SET OF MACHINES. IT WAS FAILING
10:04AM 15 AGAIN.

10:04AM 16 AND IT'S BASICALLY ME TRYING TO GET TO A RESOLUTION FOR
10:04AM 17 THE ISSUE AND ISOLATE WHAT VARIABLE COULD POSSIBLY BE GOING
10:04AM 18 WRONG TO GET THE QC'S TO PASS TO THEN RUN THE PATIENT SAMPLE.

10:04AM 19 AND THEN I'M ALSO ALERTING THAT I'M GOING TO HAVE ANOTHER
10:04AM 20 TECHNICIAN COME IN TO HELP ME RESOLVE WHAT IT MIGHT BE.

10:04AM 21 BY MR. BOSTIC:

10:04AM 22 Q. YOU MENTION IN THIS EMAIL USING A DIFFERENT BOTTLE OF
10:04AM 23 SUBSTRATE FOR THOSE ADDITIONAL TESTS?

10:04AM 24 A. YES.

10:04AM 25 Q. AND WHAT DID THAT MEAN AND WHY DID YOU DO THAT?

10:04AM 1 A. SO THE SUBSTRATE IS ESSENTIALLY A TYPE OF CHEMICAL THAT
10:04AM 2 HELPS THE ASSAY FLUORESCENCE AND EMIT LIGHT, AND THAT'S HOW YOU
10:04AM 3 GET THE READING OF WHAT THE CONCENTRATION OF VITAMIN D IS. SO
10:04AM 4 IT'S A PART OF THE ASSAY.

10:04AM 5 AND BASICALLY I WAS JUST GETTING A NEW BOTTLE OF THAT
10:04AM 6 SUBSTRATE TO SEE IF THERE WAS CONTAMINATION, WAS THERE SOME SORT OF
10:04AM 7 PROBLEM WITH THE REAGENTS THAT WE WERE USING. SO I GOT AN
10:05AM 8 UNOPENED BOTTLE TO SEE IF THAT WOULD MAKE THE QC'S PASS.

10:05AM 9 Q. AND DID THAT RESOLVE THE PROBLEM?

10:05AM 10 A. NO.

10:05AM 11 Q. THOSE ADDITIONAL CHECKS THAT YOU WERE DOING, WERE THEY
10:05AM 12 STILL ON THE SAME GROUP OF EDISONS THAT YOU HAD BEEN TRYING TO
10:05AM 13 MAKE WORK THE FIRST TIME?

10:05AM 14 A. YES.

10:05AM 15 Q. LET'S LOOK AT PAGE 1 OF THIS DOCUMENT, PLEASE, AND LET'S
10:05AM 16 ZOOM IN ON THE BOTTOM OF THE PAGE.

10:05AM 17 AND, MS. CHEUNG, DO YOU SEE AN EMAIL IN THE BOTTOM OF THAT
10:05AM 18 SELECTION FROM NOVEMBER 30TH AT 7:10 A.M. AND MR. BALWANI SAYS
10:05AM 19 "THIS IS BEYOND UNACCEPTABLE PERFORMANCE."

10:05AM 20 DO YOU SEE THAT?

10:05AM 21 A. YES.

10:05AM 22 Q. AND AT THE TIME DID YOU AGREE WITH MR. BALWANI THAT THIS
10:05AM 23 WAS NOT ACCEPTABLE PERFORMANCE?

10:05AM 24 A. YES.

10:05AM 25 Q. AND WHY WAS THAT?

10:05AM 1 A. BECAUSE OUR SYSTEM WASN'T WORKING. WE WEREN'T ABLE TO GET
10:05AM 2 THE QUALITY CONTROLS TO PASS, THIS IS, AGAIN, SOMETHING THAT WE
10:06AM 3 KNOW THE CONCENTRATION OF, SO THEY SHOULD BE PASSING.

10:06AM 4 AND BASED ON THE PROMISES THAT WE MADE TO OUR PATIENTS,
10:06AM 5 AND THE COMMITMENTS THAT WE HAD IN TERMS OF DELIVERING RESULTS
10:06AM 6 IN A CERTAIN AMOUNT OF TIME, AND IF IT WASN'T GETTING OUT, WE
10:06AM 7 WEREN'T ABLE TO GET THE PATIENT RESULT OUT IN THE TIMEFRAME
10:06AM 8 THAT WE PROMISED TO THEM.

10:06AM 9 Q. DID THE QC FAILURES HAVE ANY IMPACT ON THE ACCURACY OR
10:06AM 10 RELIABILITY OF THE PATIENT TESTS THAT WERE GOING TO BE
10:06AM 11 PERFORMED ON THIS DAY?

10:06AM 12 MR. COOPERSMITH: YOUR HONOR, OBJECTION. RULE 702.

10:06AM 13 THE COURT: CAN YOU LAY A FOUNDATION.

10:06AM 14 MR. BOSTIC: SURE. LET ME REPHRASE.

10:06AM 15 Q. MS. CHEUNG, YOU MENTIONED THAT THESE PROBLEMS CREATED
10:06AM 16 ISSUES WITH THERANOS PERFORMING TESTS QUICKLY ENOUGH; IS THAT
10:07AM 17 RIGHT?

10:07AM 18 A. THAT IS CORRECT.

10:07AM 19 Q. AT THERANOS DID YOU UNDERSTAND WHETHER QC FAILURES ALSO
10:07AM 20 RELATED NOT JUST TO THE SPEED WITH WHICH TESTS COULD BE
10:07AM 21 CONDUCTED, BUT ALSO TO THE ACCURACY OF THE RESULTS?

10:07AM 22 A. YES.

10:07AM 23 Q. AND WHAT IS THE RELATIONSHIP, AS YOU UNDERSTOOD IT AT THE
10:07AM 24 TIME, BETWEEN QUALITY CONTROL TESTING AND TEST ACCURACY?

10:07AM 25 MR. COOPERSMITH: YOUR HONOR, IT'S RULE 702. EVEN

10:07AM 1 IF SHE HAS AN UNDERSTANDING, SHE CAN'T TESTIFY AS AN EXPERT
10:07AM 2 WITNESS. SO RULE 702.

10:07AM 3 THE COURT: I'M SORRY. DID WE TALK ABOUT THIS AT
10:07AM 4 PRETRIAL? WE PROBABLY DIDN'T ABOUT SPEAKING OBJECTIONS, AND I
10:07AM 5 APOLOGIZE WE DIDN'T COVER THAT.

10:07AM 6 BUT IF YOU WANT TO, MR. BOSTIC, IF YOUR QUESTIONS ABOUT
10:07AM 7 WHAT THIS WITNESS KNOWS AND OTHER WITNESSES KNOW THE BASIS OF
10:07AM 8 THE KNOWLEDGE, IF SHE WAS TRAINED OR AS TO CERTAIN THINGS OR
10:08AM 9 WHETHER OR NOT THIS MOVES INTO 702 TERRITORY, IT'S SOMETHING
10:08AM 10 THAT WE TALKED ABOUT YESTERDAY IN REGARDS TO THE WITNESS'S
10:08AM 11 BREADTH OF KNOWLEDGE AND THE BASIS FOR IT.

10:08AM 12 MR. BOSTIC: UNDERSTOOD, YOUR HONOR.

10:08AM 13 Q. LET ME ASK A PREFATORY QUESTION.

10:08AM 14 MS. CHEUNG, WHEN YOU WERE AT THERANOS, DID YOU RECEIVE
10:08AM 15 TRAINING AS TO THE PURPOSE FOR QUALITY CONTROL TESTING?

10:08AM 16 A. YES.

10:08AM 17 Q. AND WHAT WERE YOU TOLD AT THERANOS ABOUT WHY QUALITY
10:08AM 18 CONTROL TESTING WAS NEEDED?

10:08AM 19 A. SO --

10:08AM 20 MR. COOPERSMITH: OBJECTION. HEARSAY, YOUR HONOR.

10:08AM 21 THE COURT: OVERRULED.

10:08AM 22 THE WITNESS: SO FOR THE QUALITY CONTROL TRAINING
10:08AM 23 THAT WE RECEIVED, ESSENTIALLY IT WAS, AGAIN, A WAY IN WHICH WE
10:08AM 24 COULD MEASURE THE PERFORMANCE -- THE QUALITY CONTROL SYSTEM WAS
10:08AM 25 ESSENTIALLY TO GIVE US AN INDICATION OF HOW WELL OUR SYSTEM WAS

10:08AM 1 RUNNING AND IF IT WAS RUNNING TO THE CALIBER IN WHICH WE
10:08AM 2 ARTICULATED IT WOULD RUN.

10:09AM 3 SO IF YOU HAVE, AGAIN, A KNOWN CONCENTRATION OF A SAMPLE
10:09AM 4 WHICH THAT IS GIVEN TO US THAT IT IS 10 NANOGRAMS PER MIL, AND
10:09AM 5 THE FACT THAT WE RUN IT ON OUR SYSTEM AND IT'S COMING OUT 52,
10:09AM 6 WE KNOW THAT THERE IS SOMETHING WRONG WITH THE ACCURACY.

10:09AM 7 AND WE WERE ALSO UNDERSTOOD AND TOLD THAT THAT DEVIATION
10:09AM 8 OF 10 NOT EQUALLING 52 COULD BE FOR A VARIETY OF DIFFERENT
10:09AM 9 REASONS, BUT AT THE END OF THE DAY WE KNOW THE ACCURACY IS NOT
10:09AM 10 CORRECT BECAUSE IT'S ALREADY ARTICULATED TO US AT THE BEGINNING
10:09AM 11 THAT 10 -- THE CORRECT VALUE FOR VITAMIN D IS 10.

10:09AM 12 SO IT WAS AN INDICATION THAT THERE WAS SOME ISSUE IN THE
10:09AM 13 ACCURACY OF THE ACTUAL DEVICE, BECAUSE, AGAIN, YOU KNOW IT
10:09AM 14 EQUALS 10 OR IN SOME ACCEPTABLE RANGE OF 10.

10:09AM 15 BY MR. BOSTIC:

10:09AM 16 Q. THANK YOU.

10:09AM 17 GOING BACK TO THIS PARTICULAR DAY AND THIS QC FAILURE, DO
10:10AM 18 YOU SEE ON THE SCREEN A MESSAGE FROM MS. HOLMES ON
10:10AM 19 NOVEMBER 30TH SUGGESTING A POSSIBLE SOLUTION?

10:10AM 20 A. YES.

10:10AM 21 Q. AND WHAT IS MS. HOLMES SUGGESTING IN THAT EMAIL?

10:10AM 22 A. SHE IS SUGGESTING THAT WE TRY AND RUN IT ON THE
10:10AM 23 TRADITIONAL METHODS.

10:10AM 24 Q. AND WHAT DID TRADITIONAL METHODS MEAN IN TERMS OF WHAT
10:10AM 25 DEVICE WOULD BE USED?

10:10AM 1 A. SO IT WOULD BE IN THIS CASE THE SIEMENS IMMULITE -- OH,
10:10AM 2 NO, NO, NO, THIS IS VITAMIN D. SO THIS WOULD BE THE DIASORIN,
10:10AM 3 WHICH IS AN FDA APPROVED OFF-THE-SHELF MACHINE THAT YOU CAN USE
10:10AM 4 TO RUN VITAMIN D SAMPLES.

10:10AM 5 Q. AND WAS THAT A THERANOS DEVICE OR A NON-THERANOS DEVICE?

10:10AM 6 A. THAT WAS A NON-THERANOS DEVICE.

10:10AM 7 Q. AND YOU MENTIONED FDA APPROVED.

10:10AM 8 WERE THE THERANOS-SPECIFIC DEVICES FDA APPROVED SPECIFIC
10:10AM 9 FOR THIS TIME?

10:10AM 10 A. CAN YOU REPEAT THE QUESTION.

10:10AM 11 Q. SURE.

10:10AM 12 THE QUESTION WAS WERE THE THERANOS-SPECIFIC DEVICES FDA
10:10AM 13 APPROVED FOR TESTING AT THIS TIME?

10:10AM 14 A. NO.

10:10AM 15 Q. LET'S ZOOM OUT, MS. WACHS, AND THEN ZOOM BACK IN ON KIND
10:11AM 16 OF THE MIDDLE AND TOP PORTION OF THE PAGE.

10:11AM 17 AT THE BOTTOM OF THE SELECTION, MS. CHEUNG, DO YOU SEE THE
10:11AM 18 RESPONSE TO MS. HOLMES'S SUGGESTION TO RUN THE SAMPLE OR
10:11AM 19 TRADITIONAL METHODS?

10:11AM 20 A. YES.

10:11AM 21 Q. AND DID THAT END UP BEING A VIABLE SOLUTION?

10:11AM 22 A. NO.

10:11AM 23 Q. AND WHY NOT?

10:11AM 24 A. BECAUSE WE DIDN'T HAVE ENOUGH BLOOD IN ORDER TO RUN A
10:11AM 25 SAMPLE ON THE DIASORIN, AND ALSO IT'S FINGERSTICK BLOOD, IT'S

10:11AM 1 NOT VENOUS BLOOD.

10:11AM 2 Q. ABOVE THAT THERE'S A MESSAGE FROM DANIEL YOUNG THAT SAYS

10:11AM 3 THAT "THIS HAS BEEN RESOLVED. SAMPLE IS BEING RUN ON EDISON."

10:11AM 4 DO YOU SEE THAT?

10:11AM 5 A. YES.

10:11AM 6 Q. AND WHO WAS DANIEL YOUNG AT THE COMPANY?

10:11AM 7 A. DANIEL YOUNG WAS THE VICE PRESIDENT OF THE COMPANY.

10:11AM 8 Q. AND TO WHOM DID HE REPORT, IF YOU KNOW?

10:11AM 9 A. HE REPORTED TO SUNNY AND ELIZABETH.

10:11AM 10 Q. AND ABOVE THAT MESSAGE MS. HOLMES ASKS, "WHAT IS THE

10:11AM 11 RESOLUTION."

10:11AM 12 DO YOU SEE THAT QUESTION?

10:12AM 13 A. YES.

10:12AM 14 Q. AND AT THE TOP OF THE PAGE SURAJ SAKSENA WRITES AND

10:12AM 15 PROVIDES THAT INFORMATION.

10:12AM 16 DO YOU SEE THAT?

10:12AM 17 A. YES.

10:12AM 18 Q. AND CAN YOU REMIND US WHO SURAJ SAKSENA?

10:12AM 19 A. SURAJ SAKSENA IS -- HE HAD SEVERAL ROLES WITHIN THE

10:12AM 20 COMPANY, BUT AT THAT TIME HE WAS APART OF A TEAM CALLED BINDERS

10:12AM 21 AND ALSO WAS WORKING IN THE ELISA TEAM AND THE PRODUCTION TEAM.

10:12AM 22 SO HE WAS A SCIENTIST.

10:12AM 23 Q. SURAJ SAYS IN HIS EMAIL, "2 OUTLIERS HAD TO BE MANUALLY

10:12AM 24 REMOVED TO PASS QC."

10:12AM 25 DO YOU SEE THAT?

10:12AM 1
10:12AM 2
10:12AM 3
10:12AM 4
10:12AM 5
10:12AM 6
10:12AM 7
10:13AM 8
10:13AM 9
10:13AM 10
10:13AM 11
10:13AM 12
10:13AM 13
10:13AM 14
10:13AM 15
10:13AM 16
10:13AM 17
10:13AM 18
10:13AM 19
10:13AM 20
10:13AM 21
10:13AM 22
10:13AM 23
10:13AM 24
10:13AM 25

A. YES.

Q. AND WHAT IS THAT REFERRING TO?

A. SO AT THERANOS THEY WOULD FREQUENTLY, THEY WOULD FREQUENTLY DELETE OUTLIERS OF A DATA SET IN ORDER TO GET VALUES TO IN THIS CASE WHEN QC'S PASS.

SO WHEN WE RAN A SPECIFIC SAMPLE, WE DIDN'T JUST RUN A SAMPLE ON ONE DEVICE, WE AT THIS TIME RAN IT ACROSS THREE DEVICES.

SO YOU COULD -- WHAT THEY'RE REFERRING TO IS THAT THEY WOULD DELETE DATA POINTS IN THAT SUBSET OF SIX IN ORDER TO GET THE QC'S TO PASS, SO THEY WOULD MOVE DATA POINTS ESSENTIALLY.

Q. YOU MENTIONED USING MULTIPLE DEVICES. WOULD THAT ALL BE FOR THE SAME TEST ON THE SAME PATIENT SAMPLE?

A. YES.

Q. AND SO WOULD THAT MEAN THAT THE MULTIPLE RESULTS WOULD BE GENERATED FOR EACH TEST ON A PATIENT SAMPLE?

A. YES.

Q. AND THEN WHAT WOULD BE DONE WITH THAT COLLECTION OF DIFFERENT RESULTS ACCORDING TO THIS METHOD?

A. SO THEY WOULD BE COMBINED AND AGGREGATED.

Q. AND WOULD ALL OF THEM BE COMBINED OR WOULD SOME BE IGNORED?

A. SO SOME OF THEM WOULD -- IF IT WAS THE CASE THAT THEY HAD FOUND DATA TO BE OUTLIERS, THEY WOULD REMOVE TWO POINTS IN SOME INSTANCES IN CASES LIKE WE'RE SEEING HERE FOR THE QC OR

10:13AM 1 ESSENTIALLY WHERE THEY HAD MOVED TWO DATA POINTS IN ORDER TO
10:14AM 2 GET THE QC'S TO PASS.

10:14AM 3 Q. AND IN SOME CASES LIKE THIS, DISCARDING THAT DATA,
10:14AM 4 IGNORING SOME OF THAT DATA COULD BE THE DIFFERENCE BETWEEN
10:14AM 5 QUALITY CONTROL PASSING OR NOT?

10:14AM 6 A. YES.

10:14AM 7 Q. LET ME ASK YOU TO TURN IN YOUR BINDER, PLEASE, TO TAB
10:14AM 8 1323.

10:14AM 9 AND DO YOU HAVE THAT IN FRONT OF YOU?

10:14AM 10 A. YES.

10:14AM 11 Q. AND IS THIS ANOTHER EMAIL CHAIN INCLUDING YOU AND OTHERS
10:14AM 12 RELATING TO QC ISSUES?

10:14AM 13 A. YES.

10:14AM 14 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 1323.

10:14AM 15 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

10:14AM 16 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:14AM 17 (GOVERNMENT'S EXHIBIT 1323 WAS RECEIVED IN EVIDENCE.)

10:15AM 18 MR. BOSTIC: AND, MS. WACHS, IF WE CAN ZOOM IN ON
10:15AM 19 THE BOTTOM HALF OF THE PAGE.

10:15AM 20 Q. SO, MS. CHEUNG, WE'RE NOW IN THE FOLLOWING MONTH OF
10:15AM 21 DECEMBER OF 2013; IS THAT RIGHT?

10:15AM 22 A. THAT'S CORRECT.

10:15AM 23 Q. COULD YOU EXPLAIN WHAT IS HAPPENING IN THIS EMAIL AND WHAT
10:15AM 24 PROMPTED YOU TO SEND IT?

10:15AM 25 A. SO WE WERE HAVING MORE QC FAILURES IN DECEMBER, AND I WAS

10:15AM 1 CONTACTING ONE OF THE TEAM LEAD SCIENTISTS AND THE HEAD OF THE
10:15AM 2 ELISA TEAM TO ESSENTIALLY LET THEM KNOW THAT WITH THE NEW
10:15AM 3 RANGES THAT WE RECEIVED, WE WERE STILL GETTING QC FAILURES.
10:15AM 4 Q. AND WAS THIS QC FAILURE HAPPENING IN THE R&D SIDE OF THE
10:15AM 5 HOUSE OR IN THE CLINICAL SIDE IN THE HOUSE WHERE PATIENT
10:15AM 6 TESTING HAPPENED? CAN YOU TELL?
10:15AM 7 A. THIS IS KIND OF IN THAT MIDDLE ZONE, SO THIS IS RELATED TO
10:15AM 8 R&D AT THIS POINT.
10:15AM 9 BUT, YEAH, THIS IS ACTUALLY RESEARCH AND DEVELOPMENT.
10:16AM 10 Q. DID YOU SAY BEFORE THAT YOU BELIEVED THAT THE CLINICAL
10:16AM 11 SIDE NEEDED TO KNOW ABOUT THIS?
10:16AM 12 A. YES.
10:16AM 13 Q. AND WHY WAS THAT?
10:16AM 14 A. BECAUSE THE QC'S ARE RELEVANT TO TESTING PATIENTS, AND SO
10:16AM 15 ALL OF THE PATIENT TESTING SHOULD OCCUR WITHIN THE CLINICAL LAB
10:16AM 16 BECAUSE THEY HAVE THE RIGHT SORT OF STAFF IN ORDER TO APPROVE
10:16AM 17 OR DENY WHETHER THE PATIENT RESULTS CAN GO OUT TO PATIENTS.
10:16AM 18 Q. DURING YOUR TIME AT THERANOS, DID INFORMATION FLOW FREELY
10:16AM 19 BETWEEN THE R&D SIDE OF THE HOUSE AND THE CLINICAL PATIENT
10:16AM 20 TESTING SIDE?
10:16AM 21 A. INITIALLY, YES.
10:16AM 22 Q. DID THAT CHANGE OVER TIME?
10:16AM 23 A. YES.
10:16AM 24 Q. HOW SO?
10:16AM 25 A. SO INITIALLY THERE WAS MORE FREE FORM COMMUNICATION

10:16AM 1 BETWEEN RESEARCH AND DEVELOPMENT IN THE CLINICAL LAB TO THE
10:16AM 2 POINT THAT WE HAD DRIVES AND THE ABILITY TO WALK OVER TO
10:16AM 3 DIFFERENT DEPARTMENTS AND TALK TO THEM ABOUT DIFFERENT ISSUES.

10:17AM 4 BUT OVER TIME IT WAS TOLD TO US THAT WE COULDN'T
10:17AM 5 COMMUNICATE WITH PEOPLE WHEN WE WERE IN CLIA, OF PEOPLE OF
10:17AM 6 OTHER DEPARTMENTS, ABOUT WHAT WAS OCCURRING IN THE CLINICAL
10:17AM 7 LAB.

10:17AM 8 AND THEN A LOT OF PEOPLE BASICALLY GOT RESTRICTED -- LIKE
10:17AM 9 THEIR ACCESS GOT CUT OFF TO OTHER DRIVES THAT WERE SHARED BY,
10:17AM 10 SAY, THE RESEARCH DEPARTMENT.

10:17AM 11 AND THEN ALSO THERE WERE PHYSICAL BARRIERS THAT WERE PUT
10:17AM 12 UP TO SORT OF DEMARCATING WHO COULD HAVE ACCESS TO CERTAIN PARTS
10:17AM 13 OF THE LABORATORY OVER OTHERS.

10:17AM 14 Q. THAT DIRECTION AND THOSE DECISIONS RESTRICTING INFORMATION
10:17AM 15 FLOW, WHERE DID THEY COME FROM, IF YOU KNOW?

10:17AM 16 A. SO WHEN WE HAD THE COMMUNICATION SPECIFICALLY ABOUT CLIA
10:17AM 17 NOT COMMUNICATING WITH OTHER DEPARTMENTS, THAT CAME FROM SUNNY.

10:17AM 18 Q. AND REGARDING THE R&D SIDE AND THE CLINICAL LAB SIDE, WAS
10:18AM 19 MR. BALWANI OVER BOTH OF THOSE SECTIONS WITHIN THERANOS?

10:18AM 20 A. YES.

10:18AM 21 Q. WERE THERE OTHER EMPLOYEES OR SUPERVISORS AT THERANOS WHO
10:18AM 22 OVERSAW BOTH OF THOSE DEPARTMENTS IN A DUAL ROLE IN THE SAME
10:18AM 23 WAY?

10:18AM 24 A. ELIZABETH HOLMES.

10:18AM 25 Q. SO WE HAVE MR. BALWANI, MS. HOLMES.

10:18AM 1 ANYONE ELSE AT THERANOS WHO IN YOUR UNDERSTANDING WAS OVER
10:18AM 2 BOTH SIDES?

10:18AM 3 A. DANIEL YOUNG.

10:18AM 4 Q. OKAY. AND ANYONE ELSE?

10:18AM 5 A. WHO OVERSAW BOTH OF THOSE DEPARTMENTS IN A KIND OF
10:18AM 6 DECISION MAKING CAPACITY OR --

10:18AM 7 Q. CORRECT.

10:18AM 8 A. AT THIS TIME I DON'T REMEMBER.

10:18AM 9 Q. THE QUALITY CONTROL FAILURES THAT WE'VE SEEN THAT WE'VE
10:18AM 10 LOOKED AT TOGETHER, WERE THOSE ISOLATED INCIDENTS OR WERE THERE
10:18AM 11 OTHER SIMILAR ISSUES THAT YOU SAW DURING YOUR TIME AT THERANOS?

10:18AM 12 A. THESE WERE CONSISTENT ISSUES.

10:19AM 13 Q. IN LATE 2013 AND EARLY 2014, WHAT WAS YOUR EXPERIENCE
10:19AM 14 GENERALLY WITH THE RELIABILITY OF THE THERANOS ANALYZERS THAT
10:19AM 15 YOU WERE OPERATING?

10:19AM 16 A. THEY WERE HIGHLY UNRELIABLE.

10:19AM 17 Q. AND WHAT MAKES YOU SAY THAT?

10:19AM 18 A. THE QC'S WERE FAILING PROBABLY ON, LIKE, EVERY TWO DAYS,
10:19AM 19 EVERY THREE DAYS, WHICH WOULD SUGGEST THAT THERE WAS SOMETHING
10:19AM 20 WRONG WITH OUR SYSTEM, AND THIS WASN'T WITH ONE SPECIFIC ASSAY
10:19AM 21 OR ONE SPECIFIC TEST, BUT IT WAS ACROSS TESTS.

10:19AM 22 SO WE SAW ISSUES WITH VITAMIN D, WE SAW THE TSH, TPSA.
10:19AM 23 BASICALLY WITH ALL OF THE EDISON TESTS AT SOME POINT IN TIME WE
10:19AM 24 WERE HAVING QC FAILURES, OR JUST REALLY KIND OF UNRELIABLE
10:19AM 25 RESULTS, NOT ONLY THE QC'S BUT ALSO OTHER TYPE OF VALIDATION

10:19AM 1 STUDIES OR IN HOUSE RESEARCH STUDIES THAT WE WERE DOING THAT
10:19AM 2 MADE IT VERY COMPLICATED TO REALLY UNDERSTAND WHAT WAS GOING
10:20AM 3 ON.

10:20AM 4 Q. IN LATE 2013, EARLY 2014, DID YOU RAISE THESE CONCERNS
10:20AM 5 WITH ANY OF THE PEOPLE THAT WE'VE BEEN TALKING ABOUT, EITHER
10:20AM 6 MS. HOLMES, MR. BALWANI, OR DAN YOUNG?

10:20AM 7 A. WITH DANIEL YOUNG, YES.

10:20AM 8 Q. AND TELL US ABOUT THAT? HOW DID THAT CONVERSATION GET
10:20AM 9 STARTED?

10:20AM 10 A. YEAH. SO I HAD CALLED A MEETING WITH DANIEL YOUNG AND
10:20AM 11 SURAJ SAKSENA BECAUSE THE QC FAILURES WERE HAPPENING SO
10:20AM 12 FREQUENTLY THAT WE WERE TRYING TO PROBLEM SOLVE ON WHAT IS THE
10:20AM 13 ISSUE AT HAND.

10:20AM 14 AND WE, WE SAT DOWN AND WE HAD A MEETING TO SORT OF FIGURE
10:20AM 15 THAT OUT. AND THE RESOLUTION OF THAT MEETING WAS ESSENTIALLY
10:20AM 16 POTENTIALLY IT WAS THE SAMPLES THAT WE WERE GETTING TO RUN THE
10:20AM 17 QC'S, SO MAYBE WE SHOULD TRY AND DEVELOP THEM IN HOUSE VERSUS
10:20AM 18 PURCHASE THEM THROUGH OTHER PARTIES TO SEE IF THAT MAKES A
10:20AM 19 DIFFERENCE.

10:20AM 20 AND -- YEAH, THAT WAS ESSENTIALLY THE RESOLUTION OF THAT
10:21AM 21 MEETING WAS, OKAY, MAYBE WE JUST NEED TO DEVELOP OUR QUALITY
10:21AM 22 CONTROL SUBSTANCES IN HOUSE.

10:21AM 23 Q. AND DID THAT MEETING ADDRESS THE CONCERNS THAT YOU WERE
10:21AM 24 HAVING AT THAT TIME ABOUT THE RELIABILITY OF THE SYSTEM?

10:21AM 25 A. NO. IT FREQUENTLY FELT WHEN WE HAD THESE MEETINGS THAT IT

10:21AM 1 WAS ALWAYS KIND OF LIKE A GOOSE CHASE FOR SPECIFIC ISSUES

10:21AM 2 VERSUS THE SORT OF LIKE OVERARCHING PROBLEMS OF LIKE THE

10:21AM 3 EDISONS JUST DON'T SEEM TO BE WORKING VERY WELL, AND THEIR

10:21AM 4 PERFORMANCE IS SO UNRELIABLE. WHETHER THAT'S ON THE HARDWARE

10:21AM 5 SIDE, WHETHER THAT'S ON THE ASSAY SIDE, WHETHER THAT'S ON THE

10:21AM 6 REAGENTS SIDE OR WHETHER THAT'S ON THE FAILURES OF THE TRAINING

10:21AM 7 SIDE, IT'S JUST THAT THERE ARE SO MANY ISSUES WITH THE WHOLE

10:21AM 8 SYSTEM IN ITSELF THAT WE NEED TO REALLY KIND OF TAKE IT BACK TO

10:21AM 9 THE DRAWING BOARD BECAUSE THEY'RE JUST NOT WORKING VERY WELL.

10:21AM 10 Q. AND YOU MENTIONED THAT MEETING WAS WITH DR. YOUNG. AND

10:21AM 11 SURAJ SAKSENA WAS ALSO PRESENT?

10:21AM 12 A. YES.

10:21AM 13 Q. AND ANYONE ELSE PRESENT FOR THAT MEETING?

10:21AM 14 A. NOT AT THAT MEETING.

10:21AM 15 Q. AND WHO DID DR. YOUNG REPORT TO AT THERANOS?

10:22AM 16 A. SUNNY BALWANI AND ELIZABETH HOLMES.

10:22AM 17 Q. CAN YOU PLEASE TURN TO TAB 1431 IN YOUR BINDER.

10:22AM 18 DO YOU SEE IN FRONT OF YOU AN EMAIL CHAIN BETWEEN YOU AND

10:22AM 19 OTHERS AT THERANOS RELATING TO QUALITY CONTROL ISSUES AT

10:22AM 20 THERANOS?

10:22AM 21 A. YES.

10:22AM 22 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 1431.

10:22AM 23 MR. COOPERSMITH: YOUR HONOR, WE OBJECT TO THE TOP

10:22AM 24 EMAIL ON 1431, AND IT'S HEARSAY.

10:22AM 25 I'M SORRY. I WITHDRAW THAT. NO OBJECTION, YOUR HONOR.

10:22AM 1 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:22AM 2 (GOVERNMENT'S EXHIBIT 1431 WAS RECEIVED IN EVIDENCE.)

10:22AM 3 MR. BOSTIC: THANK YOU, YOUR HONOR.

10:22AM 4 MS. WACHS, LET'S START WITH PAGE 6 OF THIS DOCUMENT.

10:22AM 5 Q. MS. CHEUNG, DO YOU SEE IN THE MIDDLE OF THE PAGE THERE'S

10:23AM 6 AN EMAIL FROM ADAM ROSENDORFF TO YOU?

10:23AM 7 A. YES.

10:23AM 8 Q. AND WHO WAS ADAM ROSENDORFF AT THERANOS?

10:23AM 9 A. ADAM ROSENDORFF WAS A MEDICAL DIRECTOR AT THERANOS.

10:23AM 10 Q. AND IN THAT ROLE WHAT WAS HIS INVOLVEMENT WITH THE

10:23AM 11 CLINICAL TESTING DONE AT THE COMPANY?

10:23AM 12 A. HE WAS KIND OF OVERSEEING ALL OF THE CLINICAL TESTING, SO

10:23AM 13 HE WOULD LET US KNOW WHEN WE HAD NEW ASSAYS THAT WE NEEDED TO

10:23AM 14 ONBOARD; AND IF WE HAD ANY ISSUES IN THE CLINICAL LAB, HE AND

10:23AM 15 THE LAB DIRECTOR WERE THE POINT PERSON THAT WE WOULD TALK TO.

10:23AM 16 HE WAS THE HEAD OF THAT DEPARTMENT.

10:23AM 17 Q. AND THIS EMAIL ON JANUARY 15TH, 2014, RELATES TO QUALITY

10:23AM 18 CONTROL FOR EDISONS ACCORDING TO THE SUBJECT LINE; IS THAT

10:23AM 19 RIGHT?

10:23AM 20 A. THAT IS CORRECT.

10:23AM 21 Q. AND DR. ROSENDORFF IS ASKING YOU ABOUT VITAMIN D IN

10:23AM 22 PARTICULAR; IS THAT CORRECT?

10:23AM 23 A. THAT IS CORRECT.

10:23AM 24 Q. LET'S GO TO PRECEDING PAGE, SO FORWARD IN TIME, TO PAGE 5

10:24AM 25 OF THIS EXHIBIT, AND LET'S ZOOM IN ON THE BOTTOM MESSAGE.

10:24AM 1 AND DO YOU SEE HERE AN EMAIL FROM DR. ROSENDORFF TO YOU
10:24AM 2 SAYING THAT THE CV PERCENTAGE IS WAY TOO HIGH?

10:24AM 3 DO YOU SEE THAT?

10:24AM 4 A. YES.

10:24AM 5 Q. AND CAN YOU EXPLAIN WHAT MEANT? FOR EXAMPLE, WHAT IS CV?

10:24AM 6 A. SO CV STANDS FOR COEFFICIENT OF VARIANT. AND ESSENTIALLY
10:24AM 7 WHAT THIS IS SAYING IS THAT BECAUSE WE HAD AGGREGATED SIX DATA
10:24AM 8 POINTS IN ORDER TO GENERATE A RESULT, THAT THE VALUES FOR THEM
10:24AM 9 WERE TOO DISPARATE FROM ONE ANOTHER.

10:24AM 10 AND HE'S BASICALLY TELLING US THAT BASED ON THE VALIDATION
10:24AM 11 WORK THAT WE CONDUCTED IT SHOULD BE 20 PERCENT, BUT WHAT WE'RE
10:24AM 12 SEEING IS A MUCH HIGHER VALUE. SO YOU'RE SAYING MORE VARIANTS
10:25AM 13 AT 33 PERCENT.

10:25AM 14 Q. AND GENERALLY SPEAKING, AT THERANOS WAS A HIGH CV
10:25AM 15 DESIRABLE OR WAS A LOW CV DESIRABLE?

10:25AM 16 A. A LOW CV DESIRABLE.

10:25AM 17 Q. AND WHY WAS A LOW CV DESIRABLE IN TERMS OF YOUR WORK AT
10:25AM 18 THERANOS?

10:25AM 19 A. A LOW CV IS MORE DESIRABLE BECAUSE IT MEANS YOU HAVE LESS
10:25AM 20 VARIANTS.

10:25AM 21 Q. IS THAT ANOTHER WAY OF SAYING THAT THE RESULTS WERE MORE
10:25AM 22 CONSISTENT?

10:25AM 23 A. YES.

10:25AM 24 Q. AND WERE HIGH CV'S A REPEATED PROBLEM THAT YOU SAW
10:25AM 25 MULTIPLE TIMES AT THERANOS?

10:25AM 1

A. YES.

10:25AM 2

Q. LET'S GO TO, IN THE SAME EXHIBIT, PAGE 3, PLEASE. AND

10:25AM 3

LET'S ZOOM IN ON THE BOTTOM PORTION.

10:26AM 4

MS. CHEUNG, DO YOU SEE HERE A MESSAGE FROM

10:26AM 5

SHARADA SIVARAMAN NOTING THAT THE CV'S ARE HIGH BETWEEN

10:26AM 6

DEVICES?

10:26AM 7

A. YES.

10:26AM 8

Q. AND THERE'S THEN A STATEMENT BELOW THAT. IT SAYS, "SINCE

10:26AM 9

WE ARE ALLOWED TO REMOVE 2 DATA POINTS FROM 6 (1 CARTRIDGE OUT

10:26AM 10

OF 3) I HAVE ATTEMPTED TO DO THAT."

10:26AM 11

DO YOU SEE THAT?

10:26AM 12

A. YES.

10:26AM 13

Q. AND WHAT IS THAT REFERRING TO? WHERE DID THESE SIX DATA

10:26AM 14

POINTS COME FROM?

10:26AM 15

A. SO, AGAIN, AT THIS TIME WHEN WOULD RUN SAMPLE, WHETHER IT

10:26AM 16

WAS A QC OR A PATIENT SAMPLE FOR ONE SPECIFIC TEST, WE WOULD

10:26AM 17

RUN THAT ON THREE SEPARATE EDISONS, AND THEN WE WOULD COMBINE

10:26AM 18

THE DATA POINTS FROM THOSE THREE SEPARATE EDISONS INTO ONE

10:26AM 19

AGGREGATED RESULT.

10:26AM 20

SO WHAT SHE'S SAYING IS THAT EACH OF THESE CARTRIDGES HAVE

10:26AM 21

TWO REACTION TIPS ON IT, AND SO ONE EDISON, TWO REACTION

10:27AM 22

EDISON, THE SECOND EDISON, AND THEN TWO FOR THE THIRD.

10:27AM 23

SO SHE'S BASICALLY SAYING THAT YOU CAN REMOVE TWO OF THOSE

10:27AM 24

DATA POINTS OF THOSE TWO REACTION TIPS OF THE SIX RESULTS THAT

10:27AM 25

ARE GENERATED.

10:27AM 1 Q. SO YOU MENTIONED THREE DEVICES BEING USED TOGETHER; IS
10:27AM 2 THAT RIGHT?

10:27AM 3 A. THAT IS CORRECT.

10:27AM 4 Q. ARE WE TALKING ABOUT TO PERFORM ONE TEST FOR ONE PATIENT
10:27AM 5 SAMPLE, THREE EDISONS WOULD BE REQUIRED?

10:27AM 6 A. YES.

10:27AM 7 Q. AND SO GOING BACK TO -- DO YOU RECALL SOME DISCUSSION
10:27AM 8 ABOUT A DEMO WHERE THREE EDISON TESTS MIGHT HAVE BEEN REQUIRED?

10:27AM 9 A. YES.

10:27AM 10 Q. IF ONE PATIENT NEEDED TO HAVE THREE DIFFERENT TESTS
10:27AM 11 PERFORMED, HOW MANY EDISON DEVICES WOULD BE REQUIRED UNDER THIS
10:27AM 12 PROCESS?

10:27AM 13 A. NINE -- OR, NO. YEAH, NINE.

10:27AM 14 Q. NINE SEPARATE EDISON DEVICES?

10:27AM 15 A. YES.

10:27AM 16 Q. AND IN GROUPS OF THREE, EACH ONE WOULD RUN THE SAME TEST
10:28AM 17 TWO TIMES?

10:28AM 18 A. YES.

10:28AM 19 Q. AND THEN ACCORDING TO THIS EMAIL, A CERTAIN PORTION OF
10:28AM 20 THAT DATA COULD BE DISREGARDED OR IGNORED?

10:28AM 21 A. YES.

10:28AM 22 Q. THIS PROCESS OF USING MULTIPLE DEVICES, RUNNING EACH TEST
10:28AM 23 MULTIPLE TIMES AND THEN DISCARDING SOME OF THE DATA.

10:28AM 24 WAS THAT USED AT THERANOS WITH THE NON-THERANOS DEVICES?

10:28AM 25 A. NO.

10:28AM 1 Q. WITH THE NON-THERANOS DEVICES LIKE THE SIEMENS ADVIA, WERE
10:28AM 2 THEY REQUIRED TO BE RUN IN GROUPS? DID THEY NEED TO TEAM UP TO
10:28AM 3 RUN A SINGLE PATIENT SAMPLE?

10:28AM 4 A. CAN YOU REPEAT THAT QUESTION.

10:28AM 5 Q. SURE.

10:28AM 6 AT THERANOS WAS THE SIEMENS ADVIA ABLE TO RUN A PATIENT
10:28AM 7 TEST ON ITS OWN IN A SINGLE DEVICE, OR DID IT NEED TO BE
10:28AM 8 GROUPED INTO GROUPS OF MULTIPLE DEVICES THE WAY THAT THE EDISON
10:28AM 9 DID?

10:28AM 10 A. NO. OKAY.

10:28AM 11 FOR THE SIEMENS ADVIA, YOU JUST PUT THE SAMPLE IN THERE
10:29AM 12 AND IT WOULD JUST RUN ALL OF THE TESTS AND IN ALL OF THE
10:29AM 13 PATIENTS AT ONCE. YOU DIDN'T HAVE TO GROUP MULTIPLE
10:29AM 14 SIEMENS ADVIAS TOGETHER TO PRODUCE A PATIENT RESULT.

10:29AM 15 Q. AND THERE WERE OTHER THIRD PARTY DEVICES AT THERANOS
10:29AM 16 BESIDES THE SIEMENS ADVIA; IS THAT RIGHT?

10:29AM 17 A. YES.

10:29AM 18 Q. FOR ANY OF THOSE THIRD PARTY DEVICES, DID THEY NEED TO
10:29AM 19 WORK IN GROUPS THIS WAY?

10:29AM 20 A. NO.

10:29AM 21 Q. LET'S LOOK AT PAGE 2, PLEASE. ACTUALLY, LET'S GO TO
10:29AM 22 PAGE 1 AND ZOOM IN ON THE MIDDLE OF THE PAGE.

10:29AM 23 PERFECT. THANK YOU.

10:29AM 24 DO YOU SEE HERE A MESSAGE FROM SHARADA SIVARAMAN FOLLOWING
10:29AM 25 UP ON THE SAME TOPIC?

10:29AM 1

A. YES.

10:29AM 2

Q. AND IN THE SECOND PARAGRAPH OF THIS EMAIL IT SAYS, "AT

10:30AM 3

THIS TIME OUR OUTLIER REMOVAL PROCEDURE IS MANUAL."

10:30AM 4

DO YOU SEE THAT?

10:30AM 5

A. YES.

10:30AM 6

Q. AND DURING YOUR TIME AT THERANOS, DID YOU EVER WITNESS

10:30AM 7

OUTLIERS BEING REMOVED FROM THESE DATA SETS?

10:30AM 8

A. YES.

10:30AM 9

Q. AND TELL US WHAT YOU SAW? HOW DID THAT WORK?

10:30AM 10

A. SO WHEN THEY WOULD DELETE OUTLIERS -- THERE WERE DIFFERENT

10:30AM 11

CONTEXTS THAT THAT WAS USED.

10:30AM 12

SO, FOR EXAMPLE, IN THE RESEARCH AND DEVELOPMENT CONTEXT,

10:30AM 13

WHAT WOULD HAPPEN IS THAT WE WOULD DISPLAY ALL OF THE DATA ON A

10:30AM 14

PRESENTATION AND SAY WE NEEDED TO GET A PARTICULAR ACCURACY IN

10:30AM 15

ORDER TO PASS VALIDATION.

10:30AM 16

SO ONCE THEY HAD ALL OF THE DATA ON THERE, AND SAY WE

10:30AM 17

DIDN'T HIT THE MARKER FOR ACCURACY, THEY WOULD START TO REMOVE

10:30AM 18

THESE DATA POINTS AND DEEM THEM AS OUTLIERS TO GET THE ACCURACY

10:30AM 19

RATE CLOSER TO WHAT THE EXPECTED RESULT WAS.

10:30AM 20

AND THIS WAS ALSO HAPPENING, AS WE SAW BEFORE, IN THE

10:30AM 21

CONTEXT OF QC'S. IF THE QC'S FAILED, WAS IT THE CASE THAT WE

10:31AM 22

WERE ABLE TO DELETE SOME OF THESE DATA POINTS IN ORDER TO GET

10:31AM 23

THEM FROM FAILING TO PASSING.

10:31AM 24

BUT THERE WASN'T NECESSARILY A STANDARD PROTOCOL THAT

10:31AM 25

PEOPLE USED FOR THIS, AND IT WAS BASICALLY AT THE DISCRETION OF

10:31AM 1 WHOEVER WAS THE PERSON HANDLING THE DATA.

10:31AM 2 Q. AND YOU SAW THIS HAPPEN PERSONALLY AT THERANOS?

10:31AM 3 A. YES.

10:31AM 4 Q. AND WHAT WAS YOUR REACTION TO THIS PROCESS, THIS PROCESS
10:31AM 5 OF TAKING MULTIPLE RESULTS FOR THE SAME TEST AND THEN
10:31AM 6 DISCARDING CERTAIN OF THEM TO MAKE QUALITY CONTROL PASS?

10:31AM 7 A. IT WAS REALLY CONCERNING BECAUSE YOU DON'T REALLY
10:31AM 8 UNDERSTAND -- NUMBER ONE, THERE WASN'T REALLY CLEAR PROTOCOLS
10:31AM 9 OF WHAT WAS CONSTITUTED AS AN OUTLIER.

10:31AM 10 SO HOW DO YOU KNOW WHAT TO REMOVE IS NOT CLEARLY DEFINED.

10:31AM 11 AND THEN NOT ONLY THAT, BUT IT GIVES YOU SORT OF AN -- IT
10:31AM 12 DOES -- IT GIVES YOU A FALSE SENSE OF WHAT IS ACTUALLY GOING ON
10:32AM 13 WITH THE SYSTEM BECAUSE ESSENTIALLY YOU'RE JUST MANIPULATING
10:32AM 14 THE DATA AT THAT POINT TO MAKE IT SEEM LIKE THE QC'S ARE
10:32AM 15 PASSING, BUT THAT MIGHT NOT ACTUALLY BE THE REALITY OF THE
10:32AM 16 SYSTEM.

10:32AM 17 SO IT WAS CONCERNING BECAUSE WE DIDN'T HAVE VERY SET
10:32AM 18 PROTOCOLS IN TERMS OF HOW THIS OUTLIER DELETION WAS HAPPENING,
10:32AM 19 AND NOT ONLY THAT, BUT THERE WAS LIKE A VARIABLE UNDERSTANDING
10:32AM 20 OF HOW THAT WAS DONE. SO YOU HAVE -- HOW SHARADA WOULD DO IT
10:32AM 21 WOULD BE DIFFERENT THAN A LAB TECHNICIAN UYEN OR SURAJ WOULD DO
10:32AM 22 IT.

10:32AM 23 SO IT BECAME VERY CONFUSING TO KNOW, WELL, WHAT IS AN
10:32AM 24 OUTLIER? WHAT IS CONSTITUTED AS AN OUTLIER? AND WHEN IS IT
10:32AM 25 APPROPRIATE TO UTILIZE AN OUTLIER DILUTION VERSUS NOT?

10:32AM 1 AND IT WAS SOMETHING THAT CREATED A LOT OF TENSION BECAUSE
10:32AM 2 IT JUST SEEMED LIKE WE WERE REMOVING DATA POINTS TO JUST MAKE
10:32AM 3 IT APPEAR THAT THINGS WERE WORKING.

10:32AM 4 Q. AND THESE QC PRACTICES AND PERFORMANCE ISSUES, DID THEY
10:33AM 5 HAVE AN EFFECT ON HOW YOU VIEWED YOUR JOB RUNNING PATIENT
10:33AM 6 SAMPLES AT THERANOS?

10:33AM 7 A. YES, BECAUSE -- FOR EXAMPLE, WITH THE QC'S, AGAIN, I KNOW
10:33AM 8 WHAT THE SAMPLE CONCENTRATION IS, BUT FOR A PATIENT RESULT, I
10:33AM 9 DON'T KNOW WHAT THE SAMPLE CONCENTRATION IS. SO HOW AM I
10:33AM 10 SUPPOSED TO UNDERSTAND WHAT DATA POINTS DO I REMOVE OR NOT IN
10:33AM 11 ORDER TO GET AN ACCURATE RESULT?

10:33AM 12 THE EXPECTATION IS THAT YOUR SYSTEM AND WHY YOU RUN THE
10:33AM 13 QC'S PERFORM WELL ENOUGH, THAT ONCE I RUN A PATIENT SAMPLE, I
10:33AM 14 HAVE SOME DEGREE OF CONFIDENCE THAT IT IS GOING TO PRODUCE AN
10:33AM 15 ACCURATE RESULT; THAT I DON'T HAVE TO GUESS, BASICALLY, ABOUT
10:33AM 16 WHAT INFORMATION TO REMOVE TO GIVE ME THE CORRECT -- YOU KNOW,
10:33AM 17 AN ACCURATE PATIENT RESULT AT THAT POINT.

10:33AM 18 Q. CAN I ASK YOU TO PLEASE LOOK AT TAB 1512 IN THE BINDER.

10:34AM 19 IS TAB 1512 AN EMAIL FROM YOU AND OTHER INDIVIDUALS AT
10:34AM 20 THERANOS RELATING TO THE PROCESSING OF TESTS AND QUALITY
10:34AM 21 CONTROL PROCEDURES?

10:34AM 22 A. YES.

10:34AM 23 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 1512.

10:34AM 24 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

10:34AM 25 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:34AM 1 (GOVERNMENT'S EXHIBIT 1512 WAS RECEIVED IN EVIDENCE.)

10:34AM 2 MR. BOSTIC: AND, MS. WACHS, IF WE CAN START WITH
10:34AM 3 THE BOTTOM OF PAGE 2, PLEASE.

10:34AM 4 Q. MS. CHEUNG, DO YOU SEE AN EMAIL TO DR. ROSENDORFF AND TO
10:34AM 5 YOU AND OTHERS AT THERANOS RELATING TO FOUR DIFFERENT ASSAYS
10:34AM 6 RUN ON THE EDISON?

10:34AM 7 A. YES.

10:34AM 8 Q. AND WHAT WERE THOSE FOUR ASSAYS?

10:34AM 9 A. SO THESE FOUR ASSAYS ARE TOTAL T4, TOTAL T3, TT4, TT3,
10:35AM 10 TESTOSTERONE, THE ACRONYM TST, AND FSH.

10:35AM 11 Q. AND WHAT GROUP OF INDIVIDUALS IS DR. ROSENDORFF EMAILING
10:35AM 12 HERE THAT YOU'RE APART OF?

10:35AM 13 A. THESE ARE ALL THE CLINICAL LAB ASSOCIATES THAT
10:35AM 14 SPECIFICALLY WORK WITH THE EDISON DEVICES.

10:35AM 15 Q. LET'S GO TO PAGE 1 OF THIS DOCUMENT, PLEASE, AND LET'S
10:35AM 16 ZOOM IN ON THE BOTTOM HALF OF THE PAGE.

10:35AM 17 THERE'S AN EMAIL AT THE BOTTOM HERE FROM SURAJ SAKSENA
10:35AM 18 REPORTING A CONCERN REGARDING STABILITY. IT SAYS, "SINCE WE DO
10:35AM 19 NOT HAVE STABILITY DATA ON THE HCV CAPSYS CARTRIDGES."

10:35AM 20 DO YOU SEE THAT?

10:35AM 21 A. YES.

10:35AM 22 Q. AND THERE'S A MENTION BELOW, "IF THIS QC FAILS, WE WILL
10:35AM 23 NOT RUN THE PATIENT SAMPLE. WE WILL HAVE TO RECALIBRATE WITH
10:36AM 24 FRESH REAGENTS."

10:36AM 25 DO YOU SEE THAT?

10:36AM 1 A. YES.

10:36AM 2 Q. AND CAN YOU EXPLAIN HERE WHAT THAT IS SAYING AND WHAT THAT

10:36AM 3 REFERS TO?

10:36AM 4 A. SO ESSENTIALLY I WAS TOLD THAT I WOULD HAVE TO RUN A

10:36AM 5 HEPATITIS C SAMPLE, WHICH AT THAT TIME WE HAD NEVER DONE

10:36AM 6 BEFORE. AND THE REAGENTS IN THE CARTRIDGES THAT WE HAD BUILT

10:36AM 7 FOR HEPATITIS C, I DIDN'T HAVE CONFIDENCE THAT THEY HAD ENOUGH

10:36AM 8 STABILITY, THAT THEY MAY HAVE BEEN EXPIRED.

10:36AM 9 SO ESSENTIALLY SURAJ IS TELLING ADAM AND THE TEAM THAT,

10:36AM 10 YOU KNOW, WE'RE GOING TO TRY AND SEE IF THE QC'S PASS UTILIZING

10:36AM 11 THESE REAGENTS THAT HAVE -- THAT ARE MAY BE GOOD, OR MAYBE NOT

10:36AM 12 GOOD, AND THEN FROM THERE WE'LL DETERMINE WHETHER WE NEED TO

10:36AM 13 RECALIBRATE THE SYSTEM OR WHETHER WE POTENTIALLY RUN THE

10:36AM 14 PATIENT SAMPLE BASED ON THOSE RESULTS.

10:36AM 15 Q. I'LL DRAW YOUR ATTENTION TO AN EMAIL THAT SAYS IT'S FROM

10:37AM 16 ROMINA RIENER.

10:37AM 17 DO YOU SEE THAT ON THE SCREEN?

10:37AM 18 A. YES.

10:37AM 19 Q. AND THE EMAIL IS SIGNED ERIKA THOUGH.

10:37AM 20 DO YOU SEE THAT?

10:37AM 21 A. YES.

10:37AM 22 Q. AND CAN YOU EXPLAIN THAT DISCREPANCY?

10:37AM 23 A. SO ALL OF US HAD THE SAME COMPUTERS AT THE LAB BENCHES,

10:37AM 24 AND I ACCIDENTALLY SENT AN EMAIL FROM ROMINA'S COMPUTER INSTEAD

10:37AM 25 OF MY COMPUTER.

10:37AM 1 Q. OKAY. SO THIS EMAIL IS FROM YOU?

10:37AM 2 A. YES.

10:37AM 3 Q. AND IN THIS EMAIL YOU WRITE, "I'LL RUN THE QC RUNS FOR THE
10:37AM 4 ASSAYS, BUT I DON'T FEEL COMFORTABLE RUNNING THE PATIENT
10:37AM 5 SAMPLE."

10:37AM 6 DO YOU SEE THAT?

10:37AM 7 A. YES.

10:37AM 8 Q. AND WHY DID YOU FEEL THAT WAY?

10:37AM 9 A. I JUST DIDN'T THINK WE HAD THE INFRASTRUCTURE TO RUN
10:37AM 10 HEPATITIS C ON A PATIENT, AND I DIDN'T FEEL COMFORTABLE BASED
10:37AM 11 ON OUR TESTING SYSTEM OR THE REAGENTS WE HAD OR ANYTHING TO
10:37AM 12 TELL SOMEONE WHETHER THEY HAD HEPATITIS C OR NOT.

10:37AM 13 Q. LET'S GO THE TOP OF THIS PAGE AND SEE HOW THIS ISSUE
10:37AM 14 RESOLVED.

10:37AM 15 AT THE TOP OF THE PAGE THERE'S ANOTHER MESSAGE FROM YOU TO
10:37AM 16 DR. ROSENDORFF.

10:37AM 17 DO YOU SEE THAT?

10:37AM 18 A. YES.

10:37AM 19 Q. AND CAN YOU DESCRIBE WHAT THE SOLUTION TO THE PROBLEM THAT
10:38AM 20 YOU WERE RUNNING INTO?

10:38AM 21 A. SO ESSENTIALLY WE DECIDED TO USE AN FDA APPROVED WAIVED
10:38AM 22 TEST CALLED THE ORAQUICK IN ORDER TO RUN THIS HEPATITIS C
10:38AM 23 SAMPLE. SO WE DIDN'T USE THE THERANOS SYSTEM, WE JUST WENT
10:38AM 24 AHEAD WITH THESE OFF-THE-SHELF TESTING KITS THAT YOU CAN GET
10:38AM 25 FOR HEPATITIS C.

10:38AM 1 Q. SO THE SOLUTION HERE WAS TO BYPASS THERANOS TECHNOLOGY
10:38AM 2 ALTOGETHER?

10:38AM 3 A. YES.

10:38AM 4 Q. OKAY. WE CAN TAKE THAT DOWN. THANK YOU, MS. WACHS.

10:38AM 5 AROUND THIS TIME OF JANUARY OR FEBRUARY OF 2014, DO YOU
10:38AM 6 RECALL AN INSTANCE WHERE THERANOS TECHNOLOGY WAS SUBJECT TO
10:38AM 7 PROFICIENCY TESTING?

10:38AM 8 A. YES.

10:38AM 9 Q. AND CAN YOU EXPLAIN WHAT PROFICIENCY TESTING IS BASED ON
10:38AM 10 YOUR WORK AT THERANOS?

10:38AM 11 A. YES. SO IN ORDER TO MAINTAIN YOUR LICENSE WITH CLIA AND
10:39AM 12 THE CENTER OF MEDICAID AND MEDICARE SERVICES, YOU HAVE TO
10:39AM 13 ESSENTIALLY RECEIVE SAMPLES FROM A THIRD PARTY LABORATORY AND
10:39AM 14 RUN IT THROUGH YOUR NORMAL WORKFLOW OF HOW YOU WOULD TYPICALLY
10:39AM 15 RUN PATIENT SAMPLES.

10:39AM 16 AND THEN ONCE YOU GET THOSE RESULTS, YOU HAND THEM OVER TO
10:39AM 17 THAT LABORATORY, AND THEY BASICALLY TELL YOU WHETHER YOU'VE
10:39AM 18 PASSED OR FAILED PROFICIENCY TESTING.

10:39AM 19 AND THIS IS A REQUIREMENT TO MAINTAIN YOUR LICENSE AND
10:39AM 20 THERE ARE DIFFERENT LABS THAT WILL BASICALLY SEND YOU THESE
10:39AM 21 KIND OF MOCK PATIENT SAMPLES.

10:39AM 22 Q. CAN I ASK YOU TO TURN TO TAB 1548 IN YOUR BINDER.

10:39AM 23 AND DO YOU SEE THERE AN EMAIL TO YOU IN FEBRUARY
10:39AM 24 REFERENCING PROFICIENCY RESULTS UPSTAIRS AND DOWNSTAIRS?

10:40AM 25 A. YES.

10:40AM 1 Q. AND CAN YOU DESCRIBE WHAT THIS EMAIL IS AND WHAT IS
10:40AM 2 ATTACHED TO IT?

10:40AM 3 A. SO THIS EMAIL IS ESSENTIALLY A PROFICIENCY TESTING RESULTS
10:40AM 4 THAT WE HAD GENERATED. AND WHAT WE HAD DONE IS WE HAD RUN THEM
10:40AM 5 ON THE EDISONS, AND THEN WE HAD RUN THEM ON THE FDA APPROVED
10:40AM 6 MACHINES.

10:40AM 7 SO BETWEEN NORMANDY AND THE DINOSAUR LAB WE RAN THE SET OF
10:40AM 8 PROFICIENCY TESTING SAMPLES ON BOTH METHODOLOGIES OR BOTH
10:40AM 9 MACHINES.

10:40AM 10 AND THIS IS ESSENTIALLY LAGLEY SAYING THAT HERE IS THE
10:40AM 11 SPREADSHEET WITH THOSE RESULTS.

10:40AM 12 Q. AND YOU SAY, "WE RAN."

10:40AM 13 FIRST OF ALL, WAS THIS THEN A COMPARISON OF THE
10:40AM 14 PERFORMANCE OF THE THERANOS ANALYZERS VERSUS COMMERCIAL
10:40AM 15 ANALYZERS?

10:40AM 16 A. YES.

10:40AM 17 Q. AND WERE YOU INVOLVED PERSONALLY IN ACTUALLY RUNNING THESE
10:40AM 18 TESTS?

10:40AM 19 A. YES.

10:40AM 20 Q. AND THE ATTACHMENT TO THIS EMAIL, DOES THAT ACCURATELY
10:41AM 21 REFLECT THE RESULTS OF THOSE TESTS?

10:41AM 22 A. YES.

10:41AM 23 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 1548.

10:41AM 24 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

10:41AM 25 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

10:41AM 1 (GOVERNMENT'S EXHIBIT 1548 WAS RECEIVED IN EVIDENCE.)

10:41AM 2 MR. BOSTIC: SO LET'S START WITH THE ATTACHMENT

10:41AM 3 ACTUALLY. AND IF WE CAN LOOK AT THAT IN NATIVE, MS. WACHS, IF
10:41AM 4 POSSIBLE.

10:41AM 5 Q. MS. CHEUNG, DO YOU SEE IN FRONT OF YOU THE RESULTS FROM
10:41AM 6 THE TESTING THAT YOU PERFORMED COMPARING THE THERANOS ANALYZERS
10:41AM 7 TO THE COMMERCIAL ANALYZERS?

10:41AM 8 A. YES.

10:41AM 9 Q. LET'S WALK THROUGH SOME OF THESE RESULTS.

10:41AM 10 FIRST OF ALL, ALONG THE LEFT SIDE DO YOU SEE SOME
10:41AM 11 DIFFERENT ASSAYS LISTED?

10:41AM 12 A. YES.

10:41AM 13 Q. AND THE TOP ONE SAYS VITAMIN D.

10:41AM 14 WHAT WAS THE VITAMIN D ASSAY AT THERANOS?

10:41AM 15 A. SO VITAMIN D WAS TO CHECK YOUR VITAMIN D LEVELS WITHIN
10:41AM 16 YOUR BLOOD.

10:42AM 17 Q. AND HOW ABOUT THE ONE BELOW THAT, TPSA?

10:42AM 18 A. TPSA IS TOTAL PROSTATE SPECIFIC ANTIGEN, AND SO IT'S
10:42AM 19 ESSENTIALLY TO TELL YOU WHETHER YOU'RE AT RISK FOR PROSTATE
10:42AM 20 CANCER OR NOT.

10:42AM 21 Q. OKAY. LET'S LOOK AT THOSE TWO ASSAYS AND THE RESULTS FOR
10:42AM 22 THOSE. CAN YOU WALK US THROUGH THIS SPREADSHEET AND TELL US
10:42AM 23 WHAT WE'RE LOOKING AT? WHAT DO THE DIFFERENT ROWS AND COLUMNS
10:42AM 24 MEAN?

10:42AM 25 A. OKAY. SO THE ROWS WHERE IT SAYS PREDICATE. THAT IS

10:42AM 1 ESSENTIALLY AN OFF-OF-SHELF FDA APPROVED MACHINE, SO IN THIS
10:42AM 2 CASE IT WOULD BE THE DIASORIN.

10:42AM 3 AND THEN THE THERANOS NANOGRAMS PER MIL, THAT'S THE EDISON
10:42AM 4 DEVICE RESULT.

10:42AM 5 AND THEN EACH COLUMN IS BASICALLY A SAMPLE THAT WE HAD
10:42AM 6 RECEIVED FOR PROFICIENCY TESTING FROM WHAT I BELIEVE AT THIS
10:42AM 7 POINT IS THE NEW YORK LABORATORY.

10:42AM 8 Q. OKAY. SO IF WE STAY IN THE UPPER LEFT CORNER OF THE
10:42AM 9 CHART, FOR EXAMPLE, NY E06, WOULD THAT BE REFERRING TO A
10:43AM 10 SPECIFIC SAMPLE THAT WAS TESTED ON BOTH DEVICES?

10:43AM 11 A. YES.

10:43AM 12 Q. AND THE COMMERCIAL DEVICE, THE PREDICATE DEVICE RETURNED A
10:43AM 13 RESULT OF 27.9; IS THAT RIGHT?

10:43AM 14 A. THAT IS CORRECT.

10:43AM 15 Q. AND THE THERANOS ANALYZER RETURNED A DIFFERENT RESULTS OF
10:43AM 16 68.26; IS THAT RIGHT?

10:43AM 17 A. THAT'S CORRECT.

10:43AM 18 Q. WHAT ABOUT THE ROW BELOW IT THAT SAYS PERCENT RECOVERY.
10:43AM 19 WHAT DOES THAT REFER TO?

10:43AM 20 A. SO PERCENT RECOVERY IS BASICALLY A MEASURE TO SEE IS THERE
10:43AM 21 ALIGNMENT BETWEEN THE PREDICATE VALUE AND THE THERANOS VALUE,
10:43AM 22 AND YOU ESSENTIALLY WANT THIS TO BE AS CLOSE TO 100 PERCENT AS
10:43AM 23 POSSIBLE.

10:43AM 24 Q. A VALUE OF 100 PERCENT WOULD INDICATE THAT THE THERANOS
10:43AM 25 ANALYZER WAS RETURNING THE SAME RESULT AS THE COMMERCIAL

10:43AM 1

ANALYZER?

10:43AM 2

MR. COOPERSMITH: OBJECTION. LEADING.

10:43AM 3

THE COURT: DO YOU WANT TO REPHRASE THE QUESTION,

10:43AM 4

MR. BOSTIC.

10:43AM 5

MR. BOSTIC: SURE. THANK YOU, YOUR HONOR.

10:43AM 6

Q. WHAT DOES A RECOVERY VALUE OF 100 PERCENT INDICATE IN

10:44AM 7

TERMS OF THE MATCH THERE?

10:44AM 8

A. IN TERMS OF THE MATCH THERE, THAT WOULD INDICATE THAT YOU

10:44AM 9

HAVE BASICALLY THE PREDICATE RESULT AND THE EDISON RESULT ARE

10:44AM 10

THE SAME.

10:44AM 11

SO YOU'RE BASICALLY HERE JUST TAKING THE THERANOS RESULT

10:44AM 12

OVER THE PREDICATE RESULT.

10:44AM 13

Q. LOOKING AT THE RESULTS FOR VITAMIN D WE SEE FIVE DIFFERENT

10:44AM 14

SAMPLES TESTED; IS THAT RIGHT?

10:44AM 15

A. THAT IS CORRECT.

10:44AM 16

Q. DID THE THERANOS RESULTS MATCH WELL WITH THE RESULTS

10:44AM 17

RETURNED BY THE COMMERCIAL ANALYZER FOR VITAMIN D?

10:44AM 18

A. NO.

10:44AM 19

Q. WHY DO YOU SAY THAT?

10:44AM 20

A. IF YOU LOOK AT COLUMN F, FOR EXAMPLE, SO YOU HAVE THE

10:44AM 21

PREDICATE METHODOLOGY, AND YOU GET 18.6 VERSUS THE THERANOS

10:44AM 22

RESULT CAME OUT 69.38, SO THAT'S, YOU KNOW, THREE, ALMOST FOUR

10:45AM 23

TIMES HIGHER THAN WHAT YOU WOULD EXPECT.

10:45AM 24

Q. AND THE PREDICATE DEVICE, OR THE COMMERCIAL ANALYZER, WAS

10:45AM 25

THAT AN FDA APPROVED DEVICE?

10:45AM 1

A. YES.

10:45AM 2

Q. IN EACH OF THESE FIVE SAMPLES, WERE THERE ANY INSTANCES

10:45AM 3

WHERE THE THERANOS ANALYZER RETURNED A RESULT THAT WASN'T AT

10:45AM 4

LEAST DOUBLE WHAT THE COMMERCIAL ANALYZER RETURNED?

10:45AM 5

A. SAY THAT ONE MORE TIME.

10:45AM 6

Q. SURE.

10:45AM 7

FOR VITAMIN D FOR EACH OF THESE FIVE SAMPLES, WERE THERE

10:45AM 8

ANY SAMPLES FOR WHICH THE THERANOS ANALYZER RETURNED A RESULT

10:45AM 9

THAT WASN'T AT LEAST DOUBLE WHAT THE COMMERCIAL ANALYZER SAID?

10:45AM 10

A. NO.

10:45AM 11

Q. LET'S LOOK AT SOME DATA FROM TPSA. YOU SAID THAT WAS

10:45AM 12

PROSPECT SPECIFIC ANTIGEN?

10:45AM 13

A. YES.

10:45AM 14

Q. AND IN THAT SECTION LET ME ASK YOU THE SAME QUESTION, DID

10:45AM 15

THE THERANOS RESULTS LINE UP WELL WITH THE RESULTS FROM THE

10:46AM 16

COMMERCIAL ANALYZER?

10:46AM 17

A. NO.

10:46AM 18

Q. AND WHAT MAKES YOU SAY THAT?

10:46AM 19

A. SO YOU CAN SEE IN THE CASE OF IF YOU LOOK AT WHAT YOU'RE

10:46AM 20

SEEING HERE IS THAT THERE'S A LOT OF UNDER RECOVERY AMONGST THE

10:46AM 21

RESULTS AND THAT THERE'S NOT A LOT OF CONSISTENCY.

10:46AM 22

SO, FOR EXAMPLE, IF YOU LOOK AT COLUMN D AND COLUMN E

10:46AM 23

WHERE IT SAYS TM 267, WHEN YOU RUN IT ON THE PREDICATE, YOU GET

10:46AM 24

3.1 THE FIRST RUN, AND THEN YOU RERAN IT AND YOU GET 3.1 AGAIN.

10:46AM 25

BUT IF YOU LOOK AT THE THERANOS RESULT, YOU GET 1.97 AND

10:46AM 1 2.68. SO THEY'RE BOTH IN THAT CASE UNDER RECOVERY FROM WHAT
10:46AM 2 YOU WOULD ANTICIPATE FROM THE PREDICATE VALUE.

10:46AM 3 Q. I SEE. SO JUST TO BE CLEAR, WE SEE TWO SAMPLES THAT ARE
10:47AM 4 LABELLED IN RED IN THIS EXHIBIT.

10:47AM 5 DO YOU SEE THAT?

10:47AM 6 A. YES.

10:47AM 7 Q. AND THEY BOTH SAY RERUN; IS THAT RIGHT?

10:47AM 8 A. THAT'S CORRECT.

10:47AM 9 Q. WHAT DOES THAT MEAN?

10:47AM 10 A. SO THAT MEANS THAT WE RAN THE SAMPLE CONSECUTIVELY, SO WE
10:47AM 11 RAN THE SAME SAMPLE TWICE.

10:47AM 12 Q. AND IDEALLY WOULD YOU WANT TO SEE THE SAME SAMPLE RETURN
10:47AM 13 THE SAME RESULT TWICE IN A ROW OR DIFFERENT RESULTS?

10:47AM 14 A. YES. YOU WOULD ANTICIPATE THAT YOU WOULD SEE THE SAME
10:47AM 15 RESULT WHEN YOU RUN THEM TWICE.

10:47AM 16 Q. AND WHEN THESE TWO SAMPLES WERE RERUN, EACH WERE RUN
10:47AM 17 TWICE, WAS THE COMMERCIAL ANALYZER ABLE TO RETURN THE SAME
10:47AM 18 RESULTS FOR BOTH OF THESE SAMPLE TWO TIMES IN A ROW?

10:47AM 19 A. YES, YES.

10:47AM 20 Q. AND WAS THE THERANOS ANALYZER ABLE TO DO THAT SAME THING?

10:47AM 21 A. NO.

10:47AM 22 Q. THIS TESTING AT THERANOS IN FEBRUARY OF 2014, DID YOU --
10:48AM 23 LET'S SEE. WERE YOU PART OF CONVERSATIONS WITH THE COMPANY
10:48AM 24 ABOUT THE THERANOS PERFORMANCE IN THIS TESTING?

10:48AM 25 A. YES.

10:48AM 1 Q. AND GENERALLY SPEAKING, WHAT WAS THE REACTION AT THE
10:48AM 2 COMPANY TO THESE RESULTS? WERE PEOPLE SATISFIED WITH THIS
10:48AM 3 PERFORMANCE?

10:48AM 4 A. NO. PEOPLE WERE CONCERNED.

10:48AM 5 Q. LET ME DIRECT YOUR ATTENTION BACK TO THE EMAIL THAT
10:48AM 6 ATTACHES THIS CHART.

10:48AM 7 AND AT THE TOP OF THE PAGE THERE'S A MESSAGE FROM YOU TO
10:48AM 8 SOMEONE NAMED TYLER SHULTZ AT THE COMPANY.

10:48AM 9 DO YOU SEE THAT?

10:48AM 10 A. YES.

10:48AM 11 Q. AND WHO WAS TYLER SHULTZ?

10:48AM 12 A. SO TYLER SHULTZ WAS A LAB ASSOCIATE AS WELL OR LIKE AN
10:48AM 13 ENGINEER, AND HE AND I WORKED TOGETHER ON THE ELISA TEAM DURING
10:48AM 14 THE NIGHT SHIFT, AND HE ALSO WAS THE GRANDSON OF GEORGE SHULTZ,
10:49AM 15 WHO WAS ON THE BOARD OF DIRECTORS AT THE COMPANY.

10:49AM 16 Q. AND WHY DID YOU SEND THIS DATA TO MR. SHULTZ IN FEBRUARY
10:49AM 17 OF 2014?

10:49AM 18 A. SO I HAD BEEN TALKING TO TYLER ABOUT SOME OF THE ISSUES
10:49AM 19 THAT WE HAD BEEN SEEING IN THE CLINICAL LAB BASED ON THE ASSAYS
10:49AM 20 THAT WE HAD WORKED ON IN THE ELISA TEAM ON THE EDISON DEVICES,
10:49AM 21 AND SO I SENT IT OVER TO HIM TO SEE ESSENTIALLY WHAT I WAS
10:49AM 22 TALKING ABOUT SPECIFICALLY ABOUT THE DEVIATIONS BETWEEN THE
10:49AM 23 RESULTS THAT WERE BEING GENERATED ON THE COMMERCIALY AVAILABLE
10:49AM 24 MACHINES VERSUS THE EDISON DEVICES.

10:49AM 25 Q. I SEE. LET'S TURN NEXT, PLEASE, TO EXHIBIT 1589.

10:50AM 1 IF I COULD DIRECT YOUR ATTENTION TO PAGE 2. LOOKING AT
10:50AM 2 THE BOTTOM, DO YOU SEE AN EMAIL TO YOU AND OTHERS AT THERANOS
10:50AM 3 RELATING TO QC PRACTICES?
10:50AM 4 A. FROM MARK?
10:50AM 5 Q. YES.
10:50AM 6 A. YES.
10:50AM 7 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT -- I'M
10:50AM 8 SORRY. GO AHEAD.
10:50AM 9 THE WITNESS: OH, THIS IS FOR PROFICIENCY TESTING,
10:50AM 10 CORRECT, NOT QC.
10:50AM 11 MR. BOSTIC: YES. THANK YOU.
10:50AM 12 Q. I'M JUST GOING BY THE SUBJECT LINE THAT SAYS QC MEASURE
10:50AM 13 FOR EDISONS.
10:50AM 14 A. OKAY.
10:50AM 15 Q. I'LL ASK YOU TO HELP US KIND OF CLEAR THAT UP.
10:50AM 16 A. OKAY.
10:50AM 17 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS
10:50AM 18 EXHIBIT 1589.
10:50AM 19 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.
10:50AM 20 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.
10:50AM 21 (GOVERNMENT'S EXHIBIT 1589 WAS RECEIVED IN EVIDENCE.)
10:50AM 22 BY MR. BOSTIC:
10:50AM 23 Q. LET'S START WITH PAGE 2 IN THE BOTTOM HALF.
10:50AM 24 MS. CHEUNG, THE SUBJECT LINE IS "NEW QC MEASURE FOR
10:51AM 25 EDISONS."

10:51AM 1 CAN YOU EXPLAIN TO US WHETHER THIS IS THE SAME QC THAT WE
10:51AM 2 HAVE BEEN TALKING ABOUT OR SOMETHING DIFFERENT?

10:51AM 3 A. SO THIS -- ESSENTIALLY BECAUSE WE HAD GOTTEN THESE RESULTS
10:51AM 4 WITH PROFICIENCY TESTING AND NOTICED THAT THERE WERE BIG
10:51AM 5 DEVIATIONS BETWEEN WHAT WAS OCCURRING ON EDISON, THE
10:51AM 6 COMMERCIALLY VIABLE, WHAT WE DID IS RAN A WHOLE NEW SEPARATE QC
10:51AM 7 PROCEDURE TO BASICALLY INSTITUTE THAT SAME PROCESS BUT IN
10:51AM 8 HOUSE.

10:51AM 9 SO WHAT THIS IS SAYING IS THAT WHAT WE'RE GOING TO DO IS
10:51AM 10 THAT FOR ALL OF THE SAMPLES THAT WE ARE ACTIVELY TESTING ON
10:51AM 11 PATIENTS RIGHT NOW, WE'RE GOING TO TAKE DIFFERENT COLLECTIONS
10:51AM 12 IN HOUSE, SO VENI SAMPLES, FINGERSTICK SAMPLES, AND RUN THEM
10:51AM 13 SIDE BY SIDE TO CHECK AND SEE AND DO ALMOST LIKE OUR OWN
10:51AM 14 INTERNAL PROFICIENCY TESTING TO SEE IF WE'RE GETTING THAT
10:51AM 15 MISALIGNMENT BETWEEN WHAT IS COMMERCIALLY VIABLE AND WHAT THE
10:51AM 16 EDISONS ARE PRODUCING.

10:51AM 17 SO THAT'S IN REFERENCE TO THIS. IT'S SORT OF THIS NEW
10:52AM 18 IN HOUSE PROFICIENCY TESTING. YOU CAN THINK OF IT THAT WAY.

10:52AM 19 Q. OKAY. AND YOU SAID THAT THIS WAS NECESSARY BASED ON THE
10:52AM 20 DISCREPANCY BETWEEN THERANOS RESULTS AND THE PREDICATE RESULTS
10:52AM 21 LIKE WE'VE BEEN DISCUSSING?

10:52AM 22 A. THAT IS CORRECT.

10:52AM 23 Q. WERE SIMILAR STEPS NECESSARY IN CONNECTION WITH THE
10:52AM 24 NON-THERANOS ANALYZERS THAT THE COMPANY WAS USING?

10:52AM 25 A. NO.

10:52AM 1 Q. LET ME ASK YOU TO LOOK AT PAGE 1 OF THIS DOCUMENT.

10:52AM 2 ACTUALLY, I'M SORRY. LET'S GO BACK TO PAGE 2 FOR JUST A

10:52AM 3 MOMENT.

10:52AM 4 AND IN THAT EMAIL, MS. CHEUNG, DO YOU SEE THAT THIS

10:52AM 5 PROCESS WOULD INVOLVE A COMPARISON BETWEEN FINGERSTICK AND

10:52AM 6 VENOUS SAMPLES?

10:52AM 7 A. YES.

10:52AM 8 Q. YOU WERE INVOLVED IN THE VALIDATION OF TESTS AT THERANOS;

10:53AM 9 IS THAT RIGHT?

10:53AM 10 A. THAT IS CORRECT.

10:53AM 11 Q. AND WAS THIS KIND OF COMPARISON DONE AS PART OF THE

10:53AM 12 VALIDATION PROCESS FOR TESTS AT THE COMPANY?

10:53AM 13 A. YES.

10:53AM 14 Q. OKAY. AND SPECIFICALLY THE COMPARISON BETWEEN VENOUS

10:53AM 15 SAMPLES AND FINGERSTICK SAMPLES?

10:53AM 16 A. YES.

10:53AM 17 Q. LET'S GO BACK TO PAGE 1. LET'S LOOK AT THE BOTTOM OF THE

10:53AM 18 PAGE AT THE MESSAGE FROM MR. BALWANI.

10:53AM 19 AND THIS EMAIL SAYS -- LET'S SEE. I'LL DIRECT YOUR

10:53AM 20 ATTENTION TO ABOUT HALF WAY DOWN THAT FIRST PARAGRAPH.

10:53AM 21 IT SAYS -- ON THE SECOND LINE, "ONCE WE HAVE DONE THIS FOR

10:53AM 22 A COUPLE OF TIMES, WE SHOULD REMOVE THE ASSAYS FROM THE LIST

10:53AM 23 FOR WHICH WE ARE DOING THIS QC CHECK."

10:53AM 24 DO YOU SEE THAT?

10:53AM 25 A. YES.

10:53AM 1 Q. AND MR. BALWANI THEN SAYS, "WE HAVE TREMENDOUS AMOUNT OF
10:54AM 2 DATA ON EDISONS AND ELISA'S OVER THE LAST 6-PLUS YEARS TO KNOW
10:54AM 3 THEY PERFORM EXTREMELY WELL AND FOR MANY ASSAYS, BETTER THAN
10:54AM 4 PREDICATE METHODS."

10:54AM 5 DID YOU AGREE WITH MR. BALWANI THAT THE DATA ESTABLISHED
10:54AM 6 HIGH PERFORMANCE FOR THE THERANOS ASSAYS?

10:54AM 7 MR. COOPERSMITH: YOUR HONOR, OBJECTION. LACKS
10:54AM 8 FOUNDATION.

10:54AM 9 THE COURT: DO YOU WANT TO ASK SOME FOLLOW-UP
10:54AM 10 QUESTIONS, OR EXCUSE ME, SOME PREDICATE QUESTIONS.

10:54AM 11 BY MR. BOSTIC:

10:54AM 12 Q. LET ME ASK THE QUESTION A DIFFERENT WAY.

10:54AM 13 WAS THAT STATEMENT BY MR. BALWANI CONSISTENT WITH YOUR
10:54AM 14 EXPERIENCE ACTUALLY WORKING WITH THE THERANOS ANALYZERS ON
10:54AM 15 PATIENT TESTS?

10:54AM 16 A. NO.

10:54AM 17 Q. LET'S GO TO THE NEXT PAGE AND THAT'S PAGE 2 TO THE TOP OF
10:54AM 18 THE PARAGRAPH THE SECOND PARAGRAPH OF MR. BALWANI'S EMAIL.

10:55AM 19 HE WRITES, "HOWEVER, MOST IMPORTANT TO ME IS THE POINT
10:55AM 20 THAT THIS NEEDS TO BE COMMUNICATED AS TO WHY WE ARE DOING THIS.
10:55AM 21 THIS IS TO GENERATE ADDITIONAL QC DATA ACROSS OUR ENTIRE CAPSYS
10:55AM 22 AND NORMANDY PROCESS."

10:55AM 23 DO YOU SEE THAT?

10:55AM 24 A. YES.

10:55AM 25 Q. AND HE SAYS, "THERE SHOULD NOT BE ANY DOUBTS CREATED ABOUT

10:55AM 1 OUR ASSAYS AND METHODS IN THE MINDS OF CLIA OR ANYONE OUTSIDE
10:55AM 2 OF CLIA."

10:55AM 3 DO YOU SEE THAT?

10:55AM 4 A. YES.

10:55AM 5 Q. AND AT THIS POINT IN FEBRUARY OF 2014, DID YOU PERSONALLY
10:55AM 6 HAVE DOUBTS ABOUT THE THERANOS ASSAYS?

10:55AM 7 A. YES, I HAD LOTS OF DOUBTS.

10:55AM 8 Q. MR. BALWANI GOES ON TO WRITE, "I AM ALREADY EXTREMELY
10:55AM 9 IRRITATED BY UNPLANNED RUNS OF PT SAMPLES AROUND VITAMIN D AND
10:55AM 10 OTHERS AND HOW IT WAS HANDLED AND COMMUNICATED."

10:55AM 11 DO YOU SEE THAT?

10:55AM 12 A. YES.

10:55AM 13 Q. AND DO YOU UNDERSTAND WHAT "UNPLANNED PT RUNS," THAT WAS
10:55AM 14 REFERRING TO?

10:55AM 15 A. SO ESSENTIALLY BECAUSE WE HAD RUN IT ON THE COMMERCIALY
10:55AM 16 VIABLE AND THE EDISON DEVICES, SUNNY WAS UPSET THAT WE HAD DONE
10:56AM 17 THAT VERSUS JUST RUNNING IT, I SUPPOSE, AGAINST THE PREDICATE
10:56AM 18 METHODS, SO THE COMMERCIALY VIABLE MACHINES.

10:56AM 19 Q. SO YOU UNDERSTOOD THIS TO REFER TO THE TESTING THAT WE
10:56AM 20 WERE JUST LOOKING AT, THE RESULTS WHERE THERANOS WAS COMPARED
10:56AM 21 TO THE COMMERCIAL MACHINES?

10:56AM 22 A. THAT IS CORRECT.

10:56AM 23 Q. AND DID YOU UNDERSTAND THAT MR. BALWANI WAS SUPPORTIVE OF
10:56AM 24 THAT TEST HAVING BEEN RUN, OR WAS HE UNHAPPY ABOUT IT?

10:56AM 25 A. HE WAS UNHAPPY ABOUT IT.

10:56AM 1 Q. OKAY. LET'S LOOK NEXT AT 1587.

10:56AM 2 AND IS 1587 ANOTHER EMAIL FROM FEBRUARY 2014 INCLUDING YOU

10:56AM 3 AND OTHERS AT THERANOS RELATING TO THE STATUS OF EDISON

10:57AM 4 ANALYZERS?

10:57AM 5 A. YES.

10:57AM 6 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 1587.

10:57AM 7 MR. COOPERSMITH: YOUR HONOR, I HAVE A HEARSAY

10:57AM 8 OBJECTION TO THE BOTTOM EMAIL ON PAGE 2, THE FEBRUARY 25TH,

10:57AM 9 2014, AT 10:50 A.M., PAGE 2 OF EXHIBIT 1587, HEARSAY.

10:57AM 10 THE COURT: MR. BOSTIC.

10:57AM 11 MR. BOSTIC: APOLOGIES. WAS THAT THE BOTTOM OF

10:57AM 12 PAGE 1 AND TOP OF PAGE 2?

10:57AM 13 MR. COOPERSMITH: NO. I AM SORRY. IT'S THE VERY

10:57AM 14 BOTTOM EMAIL ON THE WHOLE EXHIBIT, SO THAT WOULD BE

10:57AM 15 FEBRUARY 25TH, 2014, AT 10:50 A.M.

10:58AM 16 MR. BOSTIC: I CAN LAY A FOUNDATION, YOUR HONOR.

10:58AM 17 THE COURT: SURE.

10:58AM 18 BY MR. BOSTIC:

10:58AM 19 Q. MS. CHEUNG, DO YOU SEE THAT EMAIL AT THE BOTTOM OF PAGE 2?

10:58AM 20 A. YES.

10:58AM 21 Q. AND IT'S SENT BY SOMEONE NAMED ALPHONSO NGUYEN.

10:58AM 22 WHO WAS THAT AT THERANOS?

10:58AM 23 A. ALPHONSO NGUYEN WAS ONE OF THE ENGINEERS THAT WORKED ON

10:58AM 24 THE EDISONS TO CHECK IF THE HARDWARE WAS WORKING PROPERLY AND

10:58AM 25 THERE WAS A WHOLE SEPARATE QC PROCEDURE FOR THE HARDWARE EDISON

10:58AM 1

DEVICES.

10:58AM 2

Q. AND DURING YOUR TIME AT THERANOS, WAS IT ROUTINE FOR THERE

10:58AM 3

TO BE EMAIL COMMUNICATIONS ABOUT THE STATUS OF EDISON ANALYZERS

10:58AM 4

AND THEIR ABILITY TO RUN TESTS?

10:58AM 5

A. YES.

10:58AM 6

Q. AND DID MR. NGUYEN PARTICIPATE IN THOSE CONVERSATIONS?

10:58AM 7

A. YES.

10:58AM 8

Q. WHY DID THAT INFORMATION NEED TO BE DISSEMINATED BY EMAIL

10:58AM 9

AT THERANOS?

10:58AM 10

A. BECAUSE IT WAS DYNAMIC INFORMATION. SO IT WASN'T ALWAYS

10:59AM 11

CONSISTENT THAT YOU WOULD HAVE THE SAME FAILURES ON THE SAME

10:59AM 12

MACHINES, SO WE NEEDED TO ALERT ONE ANOTHER WHEN WE WOULD DO

10:59AM 13

THE QC'S WHETHER THERE WERE ISSUES AT THE MOMENT OF THE TIME

10:59AM 14

THAT WE WERE TESTING ON THOSE MACHINES.

10:59AM 15

Q. AND WHY DID DEVICE FAILURES NEED TO BE TRACKED AT ALL?

10:59AM 16

A. BECAUSE IT WASN'T -- IF -- ESSENTIALLY IF YOU HAVE DEVICE

10:59AM 17

FAILURES, IT MAKES IT VERY HARD TO, SAY, RUN YOUR STUDIES OR

10:59AM 18

RUN PATIENT SAMPLES KNOWING THAT THE DEVICE IS NOT WORKING

10:59AM 19

PROPERLY.

10:59AM 20

Q. AND WAS INFORMATION LIKE THIS DISSEMINATED BY EMAIL SO

10:59AM 21

THAT PEOPLE LIKE YOU COULD KNOW IT AND INCORPORATE IT INTO

10:59AM 22

OPERATIONS AT THERANOS?

10:59AM 23

A. YES.

10:59AM 24

Q. AND WAS IT IMPORTANT FOR INFORMATION AND EMAILS LIKE THIS

10:59AM 25

TO BE ACCURATE SO THAT IT CAN BE RELIED UPON?

10:59AM 1

A. YES.

10:59AM 2

Q. AND WOULD EMAILS LIKE THIS BE PRESERVED SO THAT THAT

10:59AM 3

INFORMATION COULD BE REFERENCED BACK LATER IF NEEDED?

10:59AM 4

A. YES.

10:59AM 5

MR. BOSTIC: YOUR HONOR, I OFFER 1587 AS A BUSINESS

10:59AM 6

RECORD.

11:00AM 7

MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

11:00AM 8

THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

11:00AM 9

(GOVERNMENT'S EXHIBIT 1587 WAS RECEIVED IN EVIDENCE.)

11:00AM 10

BY MR. BOSTIC:

11:00AM 11

Q. AND LET'S LOOK AT THAT EMAIL AT THE BOTTOM OF PAGE 2.

11:00AM 12

SO, AGAIN, MS. CHEUNG, WE SEE THE FIRST EMAIL IN THIS

11:00AM 13

CHAIN FROM MR. NGUYEN, AND IT REFERENCES IN THE SUBJECT LINE

11:00AM 14

3.5 READERS.

11:00AM 15

A. YES.

11:00AM 16

Q. AND HE SAYS, "HI, THE BAD 3.0 READERS INCLUDE," AND THEN

11:00AM 17

HE LISTS SIX DIFFERENT DEVICES; IS THAT CORRECT?

11:00AM 18

A. THAT IS CORRECT.

11:00AM 19

Q. AND THEN HE LISTS "THE 3.5 READERS TO AVOID THIS WEEK,"

11:00AM 20

AND THERE ARE SEVERAL LISTED THERE.

11:00AM 21

DO YOU SEE THAT?

11:00AM 22

A. YES.

11:00AM 23

Q. AND WHAT WAS YOUR EXPERIENCE HOW FREQUENTLY THE EDISON

11:00AM 24

DEVICES FAILED AND HAD SOME KIND OF DEVICE FAULT?

11:00AM 25

A. IT WAS VERY FREQUENT.

11:00AM 1 Q. OKAY. IS THIS SEPARATE FROM THE QUALITY CONTROL ISSUE AND
11:01AM 2 THE PROFICIENCY TESTING THAT WE HAVE BEEN DISCUSSING?

11:01AM 3 A. YES.

11:01AM 4 Q. AND WHAT KIND OF ERRORS ARE WE TALKING ABOUT HERE?

11:01AM 5 A. SO THESE ARE DEVICE ISSUES. SO THESE COULD BE THINGS
11:01AM 6 LIKE -- ESSENTIALLY THESE DEVICES WERE -- THEY HAD LIKE ROBOTIC
11:01AM 7 SYSTEMS IN THEM AND A PIPE HEAD AND THINGS.

11:01AM 8 IT COULD BE THE TOUCHSCREEN IS NOT WORKING, OR THEY'RE TOO
11:01AM 9 HOT AND THEY'RE OVERHEATING CONSTANTLY, OR THE ROBOTIC SYSTEMS
11:01AM 10 ARE GETTING JAMMED AND SO IT'S NOT ACTUALLY MOVING THE PARTS IN
11:01AM 11 THERE.

11:01AM 12 SO THIS WAS IN REFERENCE TO THE ACTUAL HARDWARE OF THE
11:01AM 13 EDISON DEVICES AND SOFTWARE.

11:01AM 14 Q. AND DURING YOUR TIME AT THE COMPANY, WAS IT A FREQUENT
11:01AM 15 EVENT FOR SEVERAL EDISONS TO BE OUT OF COMMISSION BECAUSE OF
11:01AM 16 THESE KINDS OF PROBLEMS?

11:01AM 17 A. YES.

11:01AM 18 Q. LET'S LOOK AT 1633, PLEASE.

11:02AM 19 YOUR HONOR, I WOULD SUGGEST WE DO THIS ONE LAST EXHIBIT
11:02AM 20 AND THEN MOVE TO A BREAK IF THAT WORKS FOR THE COURT?

11:02AM 21 THE COURT: SURE.

11:02AM 22 BY MR. BOSTIC:

11:02AM 23 Q. MS. CHEUNG, DO YOU SEE EXHIBIT 1633 IN FRONT OF YOU?

11:02AM 24 A. YES.

11:02AM 25 Q. AND IS THAT AN EMAIL CHAIN INCLUDING YOU AND OTHERS AT

11:02AM 1 THERANOS RELATING TO QC FAILURE RATES?

11:02AM 2 A. YES.

11:02AM 3 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 1633.

11:02AM 4 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

11:02AM 5 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

11:02AM 6 (GOVERNMENT'S EXHIBIT 1633 WAS RECEIVED IN EVIDENCE.)

11:02AM 7 MR. BOSTIC: LET'S START, MS. WACHS, IF WE COULD

11:02AM 8 WITH THE EMAIL AT THE BOTTOM OF PAGE 1.

11:02AM 9 Q. MS. CHEUNG, HERE'S AN EMAIL FROM SOMEONE NAMED LANGLEY GEE

11:02AM 10 TO YOU AND OTHERS AT THERANOS REGARDING THE NUMBER OF FAILED

11:02AM 11 QUALITY CONTROL RUNS; IS THAT RIGHT?

11:03AM 12 A. THAT'S CORRECT.

11:03AM 13 Q. AND REMIND US, THE TERM "ELISA," WHAT DOES THAT REFER TO?

11:03AM 14 A. ELISA IS THE TYPE OF METHODOLOGY THAT YOU USE ON THE

11:03AM 15 EDISON DEVICE. SO IT'S THE TYPE OF TEST THAT YOU RUN OR THE

11:03AM 16 METHODOLOGY OF TESTS THAT YOU RUN.

11:03AM 17 Q. SO THESE ARE QC FAILURE RATES FOR THE EDISON ANALYZER?

11:03AM 18 A. THAT IS CORRECT.

11:03AM 19 Q. AND IT SAYS, "FOR MARCH, 26 PERCENT RUNS FAILED."

11:03AM 20 IS THAT RIGHT?

11:03AM 21 A. THAT IS CORRECT.

11:03AM 22 Q. AND LET'S LOOK AT THE FOLLOWING PAGE AND SEE THAT DATA.

11:03AM 23 CAN YOU EXPLAIN JUST AT A HIGH LEVEL WHAT WE'RE LOOKING AT

11:03AM 24 HERE?

11:03AM 25 A. SO WE'RE LOOKING AT ALL OF THE QUALITY CONTROL INFORMATION

11:03AM 1 FOR THE DIFFERENT TYPES OF TESTS.

11:03AM 2 SO WHERE IT SAYS ASSAY AND VITAMIN D, TT4, TT3, THOSE ARE
11:03AM 3 ALL OF THE DIFFERENT TYPES OF TESTS THAT WE WOULD RUN.

11:03AM 4 AND THEN WHERE IT SAYS LOW LEVEL AND HIGH LEVEL, THOSE ARE
11:03AM 5 THE QC SAMPLES. SO, AGAIN, WE KNOW A LOW LEVEL CONCENTRATION
11:04AM 6 FOR QC, AND HIGH LEVEL SAMPLE FOR THE QC.

11:04AM 7 THE TOTAL RUNS IS THE TOTAL NUMBER OF RUNS, THE TOTAL
11:04AM 8 NUMBER OF TIMES THAT WE RAN QC'S FOR THAT MONTH.

11:04AM 9 AND THEN THE PERCENTAGE FAILURES IS HOW MANY FAILED.

11:04AM 10 Q. AND AT THE BOTTOM RIGHT CORNER OF THAT CHART THERE'S A
11:04AM 11 TOTAL PERCENTAGE FAILURE RATE FOR QUALITY CONTROL FOR THESE
11:04AM 12 ASSAYS; IS THAT RIGHT?

11:04AM 13 A. THAT IS CORRECT.

11:04AM 14 Q. AND IT'S 25.6 PERCENT?

11:04AM 15 A. THAT IS CORRECT.

11:04AM 16 Q. LOOKING AT SOME OF THE INDIVIDUAL ASSAYS, FOR EXAMPLE,
11:04AM 17 TT3, WHAT WAS THE TT3 ASSAYS?

11:04AM 18 A. THAT'S A THYROID MARKER.

11:04AM 19 Q. AND HOW FREQUENTLY DID THE EDISON FAIL QUALITY CONTROL FOR
11:04AM 20 THE TT3 ASSAYS DURING THIS TIME PERIOD?

11:04AM 21 A. SO DURING THIS TIME PERIOD IT FAILED 50 PERCENT OF THE
11:04AM 22 TIME. SO WHAT THAT WOULD MEAN, SINCE WE HAVE TOTAL RUNS, LIKE
11:04AM 23 IF THAT WAS A PATIENT SAMPLE, WE HAD 40 RUNS, THAT MEANS 20
11:05AM 24 PEOPLE WOULD HAVE -- THERE WOULD HAVE BEEN FAILURES SO THAT
11:05AM 25 WOULD HAVE BEEN AN INACCURATE RESULT.

11:05AM 1 Q. AND WERE RATES LIKE THESE CONCERNING -- LET ME ACTUALLY
11:05AM 2 JUST POINT OUT ONE MORE.

11:05AM 3 TST AT THE BOTTOM?

11:05AM 4 A. YES.

11:05AM 5 Q. AND WHAT DID TST REFER TO?

11:05AM 6 A. THAT WAS FOR TOTAL TESTOSTERONE.

11:05AM 7 Q. AND THE FAILURE RATE THERE IS NEARLY 50 PERCENT AT 45.2?

11:05AM 8 A. THAT IS CORRECT.

11:05AM 9 Q. AND WERE RATES CONCERNING TO YOU AT THE TIME AS SOMEONE
11:05AM 10 RUNNING PATIENT TESTS?

11:05AM 11 A. YEAH, IT'S VERY CONCERNING BECAUSE AT THAT POINT YOU HAVE
11:05AM 12 A 50/50 CHANCE WHETHER IT'S AN ACCURATE RESULT OR IT'S NOT.

11:05AM 13 Q. AND FROM YOUR WORK AT THERANOS, DID YOU ALSO HAVE SOME
11:05AM 14 FAMILIARITY WITH THE QC PERFORMANCE OF THE NON-THERANOS
11:05AM 15 ANALYZERS?

11:05AM 16 A. YES.

11:05AM 17 Q. AND HOW DID YOU DEVELOP THAT FAMILIARITY?

11:05AM 18 A. I WOULD RUN PATIENT SAMPLES ON THE COMMERCIALLY VIABLE
11:05AM 19 MACHINES AND THE SORT OF FDA APPROVED MACHINES IN THE DINOSAUR
11:05AM 20 LAB FROM TIME TO TIME.

11:05AM 21 Q. AND SO THINKING BACK TO THOSE TWO GROUPS, THE THERANOS
11:06AM 22 ANALYZER, AND WE'RE LOOKING AT THE QC FAILURE RATES FOR THAT?

11:06AM 23 A. YEAH.

11:06AM 24 Q. HOW DID QC PERFORMANCE FOR THE THERANOS DEVICES COMPARE TO
11:06AM 25 THE COMMERCIAL NON-THERANOS DEVICES?

11:06AM 1 A. WE RARELY HAD QC FAILURES FOR THE COMMERCIALLY VIABLE
11:06AM 2 TESTS, OR COMMERCIALLY VIABLE -- THE TESTS THAT WE RAN ON THE
11:06AM 3 COMMERCIALLY VIABLE MACHINES. SORRY.

11:06AM 4 Q. THE NON-THERANOS DEVICES PERFORMED BETTER IN QC?

11:06AM 5 A. THAT IS CORRECT.

11:06AM 6 Q. THIS IS DATA FROM MARCH OF 2014; IS THAT RIGHT?

11:06AM 7 A. YES.

11:06AM 8 Q. AND BASED ON YOUR MEMORY, WAS MARCH AN ESPECIALLY BAD
11:06AM 9 MONTH FOR EDISON PERFORMANCE AT THERANOS, OR WAS THIS TYPICAL
11:06AM 10 OF WHAT YOU WOULD SEE?

11:06AM 11 A. THIS WAS VERY TYPICAL OF WHAT WE WOULD SEE.

11:06AM 12 Q. YOU MENTIONED THAT THIS CAUSED CONCERNS IN YOUR MIND, BUT
11:07AM 13 YOU TESTIFIED EARLIER THAT IF A DEVICE FAILED QUALITY CONTROL,
11:07AM 14 THEN IT WOULDN'T BE USED FOR PATIENT TESTING; IS THAT RIGHT?

11:07AM 15 A. THAT IS CORRECT.

11:07AM 16 Q. AND WHY DID THAT NOT REMOVE YOUR CONCERNS ABOUT PATIENT
11:07AM 17 TESTING AT THERANOS?

11:07AM 18 MR. COOPERSMITH: YOUR HONOR, OBJECTION. I THINK
11:07AM 19 THIS IS GOING TO CALL FOR A 702 ANSWER.

11:07AM 20 THE COURT: DO YOU WANT TO LAY A LITTLE MORE
11:07AM 21 FOUNDATION ABOUT HER BREADTH OF KNOWLEDGE?

11:07AM 22 MR. BOSTIC: SURE.

11:07AM 23 Q. SO, MS. CHEUNG, I'M JUST ASKING YOU TO RECONCILE TWO
11:07AM 24 THINGS THAT YOU SAID?

11:07AM 25 A. OKAY.

11:07AM 1 Q. ON THE ONE HAND DO YOU REMEMBER TESTIFYING THAT WHEN A
11:07AM 2 DEVICE FAILED QUALITY CONTROL, IT WAS NOT USED FOR PATIENT
11:07AM 3 TESTING UNTIL IT WOULD PASS?

11:07AM 4 A. RIGHT.

11:07AM 5 Q. AND IS THAT HOW THINGS ACTUALLY WORKED AT THERANOS?

11:07AM 6 A. CAN YOU REPEAT THE QUESTION ONE MORE TIME.

11:07AM 7 Q. SURE.

11:07AM 8 WAS THAT RULE FOLLOWED AT THERANOS?

11:07AM 9 A. YES.

11:07AM 10 Q. AND YOU ALSO JUST TESTIFIED THAT THESE HIGH QC FAILURE
11:08AM 11 RATES WERE CONCERNING TO YOU?

11:08AM 12 A. YES.

11:08AM 13 Q. AND MY QUESTION TO YOU IS WHY WERE THEY CONCERNING IF YOU
11:08AM 14 KNEW DEVICES WEREN'T USED IF THEY FAILED QC?

11:08AM 15 A. I THINK BECAUSE --

11:08AM 16 MR. COOPERSMITH: YOUR HONOR, PARDON ME. RULE 702.
11:08AM 17 THIS IS EXACTLY THE SAME QUESTION. THERE HAS NOT BEEN ANY
11:08AM 18 ADDITIONAL FOUNDATION LAID AS FAR AS I CAN HEAR.

11:08AM 19 THE COURT: I THINK THE POINT IS WELL TAKEN, THERE
11:08AM 20 WASN'T ANY FOUNDATION AS TO THE REASONS FOR HER CONCERN OR HER
11:08AM 21 BREADTH OF KNOWLEDGE AS TO WHY.

11:08AM 22 IS THAT SOMETHING THAT YOU CAN DO?

11:08AM 23 MR. BOSTIC: OKAY, YOUR HONOR.

11:08AM 24 Q. MS. CHEUNG, AS PART OF YOUR TRAINING AT THERANOS, WERE YOU
11:08AM 25 PROVIDED AN EXPLANATION AS TO WHY QC HAD TO BE PERFORMED BEFORE

11:08AM 1 PATIENT TESTING COULD PROCEED?

11:08AM 2 A. SO QC TESTING IS REALLY TO CHECK THE PERFORMANCE OF YOUR

11:09AM 3 SYSTEM.

11:09AM 4 SO IF YOU HAVE A HIGH PERCENTAGE OF FAILURES WITHIN THE

11:09AM 5 SYSTEM, YOU CAN KIND OF FORECAST OUT THAT THAT PERCENTAGE OF

11:09AM 6 FAILURES COULD LIKELY OCCUR FOR PATIENT TESTING.

11:09AM 7 SO IF WE HAVE A SAMPLE SIZE OF 300, AND WE'RE GETTING

11:09AM 8 ONE-FORTH OF THAT FAILURES, LET'S SAY IT'S 400, IT MEANS THAT

11:09AM 9 100 ARE ESSENTIALLY IN THE TERRITORY OF NOT BEING ACCURATE.

11:09AM 10 SO THE REASON THAT IT'S CONCERNING IS THE FACT THAT IT IS

11:09AM 11 HAPPENING ACROSS TESTS AND ACROSS MACHINES DESPITE US

11:09AM 12 CONSISTENTLY CHANGING ALL OF THESE DIFFERENT VARIABLES THAT WE

11:09AM 13 CAN ANTICIPATE THAT IT'S PROBABLY --

11:09AM 14 MR. COOPERSMITH: YOUR HONOR, IF I COULD JUST

11:09AM 15 INTERRUPT.

11:09AM 16 SHE'S NOW GIVING THE VERY ANSWER THAT WAS OBJECTIONABLE --

11:09AM 17 SHE'S GIVING THE SAME ANSWER THAT WAS OBJECTIONABLE, AND IT WAS

11:09AM 18 NOT REALLY RESPONSIVE TO THE QUESTION, SO I WOULD MOVE TO

11:10AM 19 STRIKE THE ANSWER THAT SHE JUST GAVE AND RENEW THAT OBJECTION.

11:10AM 20 THE COURT: THE ANSWER SHE GAVE I THINK WAS

11:10AM 21 APPROPRIATE. YOU OBJECTED TO A POINT.

11:10AM 22 DID YOU WANT TO ASK ADDITIONAL QUESTIONS AT THIS POINT?

11:10AM 23 BY MR. BOSTIC:

11:10AM 24 Q. MS. CHEUNG, IF I COULD JUST INTERPOSE A QUICK QUESTION.

11:10AM 25 THE ANSWER THAT YOU'RE GIVING, IS THAT BASED ON THE

11:10AM 1 TRAINING THAT YOU GOT AT THERANOS?

11:10AM 2 A. YES.

11:10AM 3 MR. BOSTIC: I WOULD JUST ASK THAT THE WITNESS BE
11:10AM 4 ALLOWED TO COMPLETE HER ANSWER.

11:10AM 5 THE WITNESS: OKAY.

11:10AM 6 THE COURT: AND YOU MAY. THE OBJECTION IS OVERRULED
11:10AM 7 AS TO THAT.

11:10AM 8 THE WITNESS: OKAY. SO THAT'S, THAT'S WHY IT WAS
11:10AM 9 CONCERNING. IT WAS CONCERNING BECAUSE IF YOU JUST EXTRAPOLATE
11:10AM 10 OUT ESSENTIALLY THE PERCENTAGE OF FAILURES THAT ARE HAPPENING
11:10AM 11 ACROSS THE SYSTEM, EVEN IF WE CHANGE THE DEVICE, THERE'S
11:10AM 12 SOMETHING STILL GOING ON THAT IS CAUSING ONE OUT OF FOUR
11:10AM 13 FAILURES OF EVERY SINGLE TEST THAT WE DO ON THIS EDISON SYSTEM,
11:10AM 14 RIGHT?

11:10AM 15 EVEN IF YOU CHANGE THE DEVICE, IT SEEMS LIKELY THAT MAYBE
11:10AM 16 THERE'S SOME ISSUE WITH THE CHEMISTRY, MAYBE -- WHATEVER THE
11:10AM 17 ISSUE MIGHT BE, IT'S STILL THE FACT THAT I KNOW WHEN I RUN FOUR
11:11AM 18 TESTS, THAT ONE OF THEM IS LIKELY NOT TO WORK BASED ON THE
11:11AM 19 CUMULATIVE DATA THAT WE'RE RUNNING FOR THE QC ANALYSIS AND
11:11AM 20 BASICALLY GETTING AN UNDERSTANDING OF HOW MANY FAILURES WE'RE
11:11AM 21 HAVING FOR QC, AND THIS IS JUST ONE MONTH.

11:11AM 22 BY MR. BOSTIC:

11:11AM 23 Q. UNDERSTOOD. THANK YOU.

11:11AM 24 YOUR HONOR, THIS MIGHT BE A GOOD TIME FOR A BREAK?

11:11AM 25 THE COURT: LET'S DO THAT, LADIES AND GENTLEMEN.

11:11AM 1 LET'S TAKE 30 MINUTES, PLEASE, 30 MINUTES.

11:11AM 2 LET ME REMIND YOU OF OUR SCHEDULE WHILE I HAVE YOUR
11:11AM 3 ATTENTION.

11:11AM 4 WE WILL NOT BE IN SESSION TOMORROW, NOR WILL WE BE IN
11:11AM 5 SESSION NEXT MONDAY OR TUESDAY.

11:11AM 6 OUR NEXT TIME TOGETHER WILL BEGIN WEDNESDAY, THE 30TH.

11:11AM 7 IS THAT CORRECT, COUNSEL? IS THAT YOUR --

11:11AM 8 MR. COOPERSMITH: YES, YOUR HONOR, THAT IS MY
11:11AM 9 UNDERSTANDING.

11:11AM 10 MR. BOSTIC: YES, YOUR HONOR.

11:11AM 11 THE COURT: ALL RIGHT. I JUST WANT TO REMIND YOU OF
11:11AM 12 THAT, PLEASE.

11:11AM 13 SO LET'S TAKE OUR BREAK. WE'LL TAKE 30 MINUTES,
11:11AM 14 30 MINUTES, PLEASE.

11:12AM 15 (JURY OUT AT 11:12 A.M.)

11:12AM 16 THE COURT: PLEASE BE SEATED. THANK YOU. THE
11:12AM 17 RECORD SHOULD REFLECT THAT THE JURY HAS LEFT FOR OUR MORNING
11:12AM 18 BREAK.

11:12AM 19 MS. CHEUNG HAS LEFT THE COURTROOM.

11:12AM 20 COUNSEL, ANYTHING BEFORE WE TAKE OUR BREAK?

11:12AM 21 MR. SCHENK: YOUR HONOR, THE GOVERNMENT HAS TWO
11:12AM 22 ISSUES THAT WE WANT TO RAISE, BUT NEITHER ARE URGENT, AND I
11:12AM 23 DON'T KNOW THAT WE NEED TO CUT INTO OUR BREAK TO DO IT. SO
11:12AM 24 MAYBE WE CAN TAKE IT UP AT THE END OF THE DAY SO WE'RE NOT
11:13AM 25 INTERRUPTING OUR BREAK.

11:13AM 1 THE COURT: SURE. THAT'S FINE.

11:13AM 2 MR. COOPERSMITH.

11:13AM 3 MR. COOPERSMITH: NOTHING, YOUR HONOR.

11:13AM 4 THE COURT: ALL RIGHT. LET'S TAKE OUR BREAK. THANK
11:13AM 5 YOU.

11:13AM 6 (RECESS FROM 11:13 A.M. UNTIL 11:48 A.M.)

11:48AM 7 (JURY IN AT 11:48 A.M.)

11:48AM 8 THE COURT: THANK YOU. WE'RE BACK ON THE RECORD.

11:48AM 9 THE PARTIES PREVIOUSLY PRESENT ARE PRESENT ONCE AGAIN.

11:48AM 10 THE JURORS AND ALTERNATES ARE PRESENT.

11:48AM 11 MS. CHEUNG IS ON THE STAND.

11:48AM 12 MR. BOSTIC.

11:48AM 13 MR. BOSTIC: THANK YOU, YOUR HONOR.

11:48AM 14 Q. WELCOME BACK. BEFORE THE BREAK WE WERE TALKING ABOUT
11:48AM 15 QUALITY CONTROL.

11:48AM 16 DO YOU RECALL THAT DISCUSSION?

11:48AM 17 A. YES.

11:48AM 18 Q. AND CAN YOU REMIND US, PLEASE, HOW THE QUALITY CONTROL
11:49AM 19 PERFORMANCE OF THE THERANOS EDISON COMPARED IN YOUR EXPERIENCE
11:49AM 20 TO THE QC PERFORMANCE OF THE UNMODIFIED THIRD PARTY DEVICES
11:49AM 21 USED AT THERANOS?

11:49AM 22 A. THERE WERE FAR MORE FAILURES ON THE EDISON DEVICES WHEN IT
11:49AM 23 CAME TO QC THAN THERE WERE ON THE COMMERCIALLY AVAILABLE
11:49AM 24 DEVICES.

11:49AM 25 Q. HOW ABOUT THE MODIFIED THIRD PARTY DEVICES THAT WERE ALSO

11:49AM 1 USED AT THERANOS, DID YOU BECOME FAMILIAR WITH THE QUALITY
11:49AM 2 CONTROL PERFORMANCE OF THE THERANOS MODIFIED COMMERCIAL
11:49AM 3 DEVICES?

11:49AM 4 A. THE ONLY ONE I WAS FAMILIAR WITH WAS THE SIEMENS ADVIA,
11:49AM 5 THE MODIFIED SIEMENS ADVIA.

11:49AM 6 Q. AND FROM YOUR EXPERIENCE WITH THAT DEVICE, DID YOU HAVE A
11:49AM 7 SENSE OF WHETHER THE THERANOS MODIFIED VERSION PERFORMED BETTER
11:49AM 8 OR WORSE IN TERMS OF QC?

11:49AM 9 A. IT PERFORMED WORSE.

11:49AM 10 Q. THAT'S WHAT YOU OBSERVED WHEN YOU WERE WORKING WITH THAT
11:49AM 11 DEVICE AT THERANOS?

11:49AM 12 A. YES.

11:49AM 13 Q. IN MARCH AND APRIL OF 2014, BASED ON THE ISSUES YOU WERE
11:50AM 14 SEEING, HOW WERE YOU FEELING ABOUT YOUR EMPLOYMENT AT THE
11:50AM 15 COMPANY?

11:50AM 16 A. I WAS REALLY CONCERNED ABOUT THE FACT THAT AT THIS POINT
11:50AM 17 THERE WAS A LOT OF EVIDENCE TO SUGGEST THAT THE THERANOS SYSTEM
11:50AM 18 AND THE EDISON DEVICES WEREN'T WORKING PROPERLY, BUT WE WERE
11:50AM 19 STILL ACTIVELY TESTING ON PATIENTS, AND I WAS GETTING
11:50AM 20 PROGRESSIVELY MORE AND MORE UNCOMFORTABLE WITH WORKING THERE
11:50AM 21 AND TESTING ON PATIENTS.

11:50AM 22 SO AT THAT TIME I WAS JUST INCREDIBLY UNCOMFORTABLE, AND
11:50AM 23 YEAH.

11:50AM 24 Q. AND DID YOU DISCUSS YOUR CONCERNS AROUND THAT TIME WITH
11:50AM 25 ANYONE ELSE AT THE COMPANY?

11:50AM 1 A. YEAH. I HAD -- I ATTEMPTED TO ADDRESS MY CONCERNS AMONGST
11:50AM 2 MY PEERS, AMONGST THE HEAD SCIENTIST, AMONGST THE VICE
11:51AM 3 PRESIDENT, FROM PEOPLE IN DIFFERENT DEPARTMENTS THAT WE WERE
11:51AM 4 SEEING AN IMMENSE AMOUNT OF ISSUES REGARDING THE QUALITY
11:51AM 5 CONTROLS AND THE OTHER EXPERIMENTS THAT WE HAD BEEN RUNNING.

11:51AM 6 I EVEN TALKED TO SUNNY ABOUT THOSE CONCERNS.

11:51AM 7 Q. AND LET'S TALK ABOUT THAT. SO WE PREVIOUSLY HAVE SPOKEN
11:51AM 8 ABOUT A MEETING THAT YOU HAD WITH DANIEL YOUNG.

11:51AM 9 WAS HE THE VICE PRESIDENT OF THE COMPANY?

11:51AM 10 A. THAT IS CORRECT.

11:51AM 11 Q. AND DID THERE COME A TIME WHEN YOU ELEVATED YOUR CONCERNS
11:51AM 12 TO SOMEONE ABOVE DANIEL YOUNG?

11:51AM 13 A. YES.

11:51AM 14 Q. AND HOW DID THAT TAKE PLACE?

11:51AM 15 A. SO ESSENTIALLY SUNNY -- I HAD GOTTEN CALLED INTO SUNNY'S
11:51AM 16 OFFICE, AND DURING THAT MEETING ESSENTIALLY HE HAD ASKED ME THE
11:51AM 17 QUESTION LIKE HOW DO YOU LIKE WORKING AT THERANOS?

11:51AM 18 AND I SAID, YOU KNOW, I LOVE THE MISSION OF THE COMPANY
11:51AM 19 AND WHAT WE'RE TRYING TO DO. I THINK THIS IS REALLY AN
11:51AM 20 INTERESTING PRODUCT TO WORK ON POINT OF CARE DIAGNOSTICS, BUT I
11:51AM 21 HAVE A LOT OF CONCERNS ABOUT WHAT IS OCCURRING IN THE CLINICAL
11:51AM 22 LAB, THE FACT THAT WE'RE HAVING QUALITY CONTROL FAILURES ON A
11:52AM 23 CONSISTENT BASIS, THAT THIS IS LEADING TO THE NEED TO
11:52AM 24 RECALIBRATE THE WHOLE SYSTEM OVER AND OVER.

11:52AM 25 I HAD EXPRESSED CONCERNS ABOUT JUST THE AMOUNT OF

11:52AM 1 VARIABILITY THAT WE HAVE BEEN SEEING WITH THE DIFFERENT TYPES
11:52AM 2 OF TESTS AND THE CV'S, AND I WAS ALSO CONCERNED ABOUT THE
11:52AM 3 CAPSYS CARTRIDGES.

11:52AM 4 SO ESSENTIALLY WE WERE TRYING TO PREFILL ALL OF THESE
11:52AM 5 CARTRIDGES, AND WHAT WE HAD SEEN BASED ON THESE STABILITY TESTS
11:52AM 6 IS THAT THEY WOULD DEGRADE IN LESS THAN A MONTH, AND THAT JUST
11:52AM 7 ADDED ANOTHER VARIABLE OF POTENTIAL ISSUES THAT WE HAD BEEN
11:52AM 8 SEEING.

11:52AM 9 AND I WAS ALSO CONCERNED ABOUT THE FACT WHEN WE WERE
11:52AM 10 MAKING MISTAKES, WE WEREN'T LETTING PATIENTS KNOW THAT THERE
11:52AM 11 WERE ISSUES GOING ON IN THE LABORATORY, AND I WAS PROGRESSIVELY
11:52AM 12 BECOMING MORE UNCOMFORTABLE WITH THE FACT THAT WE WERE NOT
11:52AM 13 ASKING FOR REDRAWS, WE WEREN'T TESTING, AND WE WEREN'T
11:52AM 14 NOTIFYING ANYONE THAT THESE ISSUES WERE GOING ON INTERNALLY.

11:52AM 15 Q. AND ON THAT LAST POINT, WHAT HAD YOU ACTUALLY SEEN THAT
11:53AM 16 HAD LED TO THOSE CONCERNS, THOSE CONCERNS ABOUT THE LAB MAKING
11:53AM 17 MISTAKES AND THEN NOT TELLING PATIENTS?

11:53AM 18 A. WELL, FOR EXAMPLE, THAT THANKSGIVING EXAMPLE WHEN I HAD
11:53AM 19 ASKED LIKE DOES THE PATIENT KNOW THAT WE HAD THESE INTERNAL
11:53AM 20 QUALITY CONTROL ISSUES, AND THEY WERE LIKE NO. WE RESULTED OUT
11:53AM 21 TO THE PATIENT.

11:53AM 22 AND WHAT WE HAD FOUND IS THAT ACTUALLY OUR REAGENTS WERE
11:53AM 23 EXPIRED IN RUNNING THAT PATIENT SAMPLE, AND THAT WAS PROBABLY
11:53AM 24 THE REASON WHY THE QC'S WERE FAILING, AMONGST OTHER THINGS.

11:53AM 25 BUT IN TALKING TO THE QUALITY -- THE CUSTOMER SERVICE

11:53AM 1 ASSOCIATES, IT WAS CLEAR THAT WE WOULDN'T BE ASKING FOR REDRAWS
11:53AM 2 OR LETTING ANYONE KNOW, AND THIS WAS AN ISSUE THAT WE HAD
11:53AM 3 RAISED IN THE CLINICAL LAB IS SHOULD THESE BE TOLD TO PATIENTS
11:53AM 4 THAT THEY'RE STILL IN DEVELOPMENT.

11:53AM 5 Q. AND SO THAT WAS ONE OF THE CONCERNS THAT YOU RAISED TO
11:53AM 6 MR. BALWANI IN THAT MEETING?

11:53AM 7 A. YEAH.

11:53AM 8 Q. AND SO CAN YOU HELP US PLACE THAT MEETING IN TIME?

11:54AM 9 A. SO THAT WAS IN APRIL OF 2014.

11:54AM 10 Q. AND WAS THIS KIND OF A PRESCHEDULED KIND OF CHECK-IN
11:54AM 11 MEETING, WAS THIS ONE OF A SERIES OF MEETINGS THAT HAD TAKEN
11:54AM 12 PLACE?

11:54AM 13 WHY WERE YOU MEETING WITH MR. BALWANI IN THE FIRST PLACE?

11:54AM 14 A. I WAS MOST LIKELY MEETING -- THIS WAS JUST A HAPHAZARD
11:54AM 15 MEETING. SO I WAS LIKELY MEETING WITH SUNNY BALWANI BECAUSE OF
11:54AM 16 THE FACT THAT I HAD SENT THOSE RESULTS TO TYLER SHULTZ, AND IT
11:54AM 17 WAS CALLED TO SORT OF FIGURE OUT WHO IN THE CLINICAL LAB
11:54AM 18 BECAUSE THEY WERE TRYING TO ASSESS WHO WAS BASICALLY TELLING
11:54AM 19 PEOPLE IN OTHER DEPARTMENTS ABOUT WHAT WAS GOING ON IN THE
11:54AM 20 CLINICAL LAB.

11:54AM 21 Q. AND WHAT MAKES YOU THINK THAT THAT WAS THE CAUSE FOR THIS
11:54AM 22 MEETING?

11:54AM 23 A. BECAUSE SUNNY BROUGHT THAT UP IN THE CONTEXT OF THE
11:54AM 24 MEETING.

11:54AM 25 Q. AND WHO ELSE WAS PRESENT FOR THE MEETING?

11:54AM 1 A. IT WAS JUST ME AND SUNNY.

11:54AM 2 Q. AND SO YOU DESCRIBED SOME OF THE ISSUES THAT YOU RAISED

11:55AM 3 FOR HIM AT THAT TIME; IS THAT CORRECT?

11:55AM 4 A. THAT IS CORRECT.

11:55AM 5 Q. AND DID YOU DISCUSS WITH HIM THE POOR QUALITY CONTROL

11:55AM 6 PERFORMANCE THAT YOU HAD BEEN SEEING IN THE LAB?

11:55AM 7 A. YES.

11:55AM 8 Q. AND DID YOU DISCUSS WITH HIM THE HIGH VARIABILITY THAT YOU

11:55AM 9 HAD OBSERVED?

11:55AM 10 A. YES.

11:55AM 11 Q. AND WE JUST TALKED ABOUT MISTAKES THAT HAD BEEN MADE BUT

11:55AM 12 NOT REPORTED TO PATIENTS; IS THAT CORRECT?

11:55AM 13 A. THAT IS CORRECT.

11:55AM 14 Q. AND WERE THERE OTHER CATEGORIES OF ISSUES THAT YOU CAN

11:55AM 15 RECALL SPECIFICALLY RAISING TO HIM AT THAT TIME?

11:55AM 16 A. IT WAS JUST CONCERNS, THE FACT THAT WE HAD THIS SYSTEM

11:55AM 17 THAT SEEMED TO BE FAILING A LOT, BUT WE WERE STILL TESTING ON

11:55AM 18 PATIENTS. THAT WAS THE MAIN CONCERN.

11:55AM 19 Q. AND WHAT DO YOU RECALL ABOUT MR. BALWANI'S REACTION WHEN

11:55AM 20 YOU RAISED THESE POINTS?

11:55AM 21 A. SO AFTER I HAD RAISED THESE POINTS, HE BASICALLY SAID, SO

11:55AM 22 YOU'RE A RECENT GRADUATE OUT OF U.C. BERKELEY. DID YOU HAVE A

11:55AM 23 JOB BEFORE THIS? HAVE YOU TAKEN A STATISTICS CLASS? WHAT

11:55AM 24 MAKES YOU THINK THAT YOU'RE QUALIFIED TO MAKE THESE ASSESSMENTS

11:56AM 25 ABOUT WHAT IS OCCURRING WITHIN THE CLINICAL LAB AND THAT YOU

11:56AM 1 HAVE ANY EXPERIENCE TO BE ABLE TO MAKE THOSE JUDGMENT CALLS?

11:56AM 2 AND THEN HE SAID THAT HE WAS TIRED OF PEOPLE WHO HAD NO

11:56AM 3 VISIBILITY OR NO TRAINING TO NECESSARILY SAY THAT THERE WERE

11:56AM 4 ISSUES OF WHAT WAS HAPPENING WITH THE EDISON DEVICES, AND THAT

11:56AM 5 THEY HAD EXTENSIVE TRIALS WITH DIFFERENT RESEARCH GROUPS AND

11:56AM 6 DIFFERENT PARTIES THAT HAD VETTED AND VALIDATED HOW THE

11:56AM 7 THERANOS DEVICES WERE GOING TO REVOLUTIONIZE MEDICINE, AND THAT

11:56AM 8 HE WAS TIRED OF THE FACT THAT PEOPLE WERE TRYING TO RAISE

11:56AM 9 DOUBTS ABOUT THE EDISON DEVICES, AND ESSENTIALLY I NEEDED TO

11:56AM 10 TELL HIM WHEN I WANTED TO STILL WORK FOR THE COMPANY, AND THAT

11:56AM 11 MY ONLY DUTY AND RESPONSIBILITY WAS TO PROCESS PATIENT SAMPLES

11:56AM 12 WITHOUT QUESTION.

11:56AM 13 Q. YOU SAID MR. BALWANI MENTIONED YOUR QUALIFICATIONS; IS

11:57AM 14 THAT RIGHT?

11:57AM 15 A. THAT IS CORRECT.

11:57AM 16 Q. CAN YOU REMIND US WHAT FIELD OR AREA OF DISCIPLINE YOUR

11:57AM 17 COLLEGE DEGREE WAS IN?

11:57AM 18 A. MOLECULAR AND CELLULAR BIOLOGY.

11:57AM 19 Q. DID YOU HAVE AN UNDERSTANDING WHEN YOU WORKED AT THERANOS

11:57AM 20 AS TO WHAT MR. BALWANI'S BACKGROUND WAS IN?

11:57AM 21 A. HE WAS A SOFTWARE ENGINEER AND HAD WORKED AT MICROSOFT,

11:57AM 22 AND THEN ALSO HAD LAUNCHED HIS OWN COMPANY THAT GOT SOLD.

11:57AM 23 Q. AND WERE YOU AWARE OF ANY EVIDENCE THAT MR. BALWANI HAD

11:57AM 24 FORMAL TRAINING IN BIOLOGY OR MEDICAL SCIENCE?

11:57AM 25 A. NO.

11:57AM 1 Q. AND WHEN YOU RAISED THE ISSUES TO MR. BALWANI IN THAT
11:57AM 2 MEETING, AT ANY POINT DID HE CLAIM THAT HE WAS HEARING THESE
11:57AM 3 THINGS FOR THE FIRST TIME?

11:57AM 4 A. NO.

11:57AM 5 Q. DID IT SEEM TO YOU THAT HE WAS HEARING ANYTHING FOR THE
11:57AM 6 FIRST TIME?

11:57AM 7 A. NO.

11:57AM 8 MR. COOPERSMITH: OBJECTION. CALLS FOR SPECULATION.

11:57AM 9 THE COURT: SUSTAINED. THE LAST ANSWER IS IT
11:57AM 10 STRICKEN, LADIES AND GENTLEMEN.

11:58AM 11 BY MR. BOSTIC:

11:58AM 12 Q. WHEN YOU RAISED THOSE ISSUES TO MR. BALWANI, DID HE,
11:58AM 13 DURING THAT CONVERSATION, CLAIM NOT TO UNDERSTAND WHAT YOU WERE
11:58AM 14 SAYING FOR ANY OF THOSE POINTS?

11:58AM 15 A. NO.

11:58AM 16 Q. FROM MR. BALWANI'S DEMEANOR WHEN YOU WERE REPORTING THESE
11:58AM 17 ISSUES TO HIM, DID HE SEEM SURPRISED?

11:58AM 18 A. NO.

11:58AM 19 Q. LET'S TALK ABOUT THE REASONS WHY YOU RAISED THOSE ISSUES
11:58AM 20 TO MR. BALWANI.

11:58AM 21 FIRST OF ALL, WHERE DID HE FIT IN IN THE COMPANY
11:58AM 22 STRUCTURE? HOW HIGH UP WAS HE?

11:58AM 23 A. HE WAS AT THE TOP TIER OF THE COMPANY, SO HE WAS THE COO,
11:58AM 24 AND HE WAS ALONGSIDE OF ELIZABETH HOLMES, WHO WAS THE CEO.

11:58AM 25 Q. AND WHAT WAS YOUR UNDERSTANDING AT THE TIME BASED ON HOW

11:58AM 1 THINGS WORKED THERE, WERE THEY CO-EQUALS AT THE COMPANY? WAS
11:59AM 2 ONE OF THEM TECHNICALLY OR IN PRACTICE HIGHER THAN THE OTHER
11:59AM 3 ONE?

11:59AM 4 A. I THINK THEY WERE CO-EQUALS.

11:59AM 5 SUNNY DID A LOT OF MORE INTERNAL FACING WORK WITH THE
11:59AM 6 COMPANY, AND SO HE INTERACTED WITH US ON THE DAY-TO-DAY
11:59AM 7 OPERATIONS OF WHAT WERE DOING.

11:59AM 8 AND IT SEEMED THAT ELIZABETH WAS MORE EXTERNAL FACING, SO
11:59AM 9 SHE WOULD ENGAGE WITH OTHER STAKEHOLDERS OUTSIDE OF THE COMPANY
11:59AM 10 MORE SO.

11:59AM 11 Q. AND I FORGET THE PHRASE YOU USED, BUT WE'RE TALKING ABOUT
11:59AM 12 THE TOP TIER OF MANAGEMENT AT THE COMPANY; IS THAT CORRECT?

11:59AM 13 A. THAT IS CORRECT.

11:59AM 14 Q. AND WAS THERE ANYONE ELSE IN THAT TOP TIER THAT INCLUDED
11:59AM 15 MR. BALWANI AND MS. HOLMES BASED ON YOUR EXPERIENCE AT THE
11:59AM 16 COMPANY?

11:59AM 17 A. NOT BASED ON MY EXPERIENCE. THEY SEEMED TO BE THE TOP
11:59AM 18 TWO.

11:59AM 19 Q. IN YOUR VIEW AT THIS TIME WERE THOSE ISSUES IMPORTANT
11:59AM 20 ENOUGH TO DESERVE ATTENTION FROM THE TOP TIER OF MANAGEMENT?

11:59AM 21 A. YES.

11:59AM 22 Q. AND DID YOU CONSIDER RAISING THESE ISSUES DIRECTLY TO
11:59AM 23 MS. HOLMES AS WELL TO CAPTURE THE OTHER TOP HALF OF THAT TIER?

12:00PM 24 A. SO I HAD SENT THOSE RESULTS AND HAD BEEN IN CONVERSATION
12:00PM 25 WITH TYLER SHULTZ WHO HAD A CLOSE RELATIONSHIP WITH

12:00PM 1 ELIZABETH HOLMES BECAUSE ESSENTIALLY TYLER SHULTZ'S GRANDFATHER
12:00PM 2 WAS GEORGE SHULTZ, WHO WAS ON THE BOARD OF DIRECTORS, AND I
12:00PM 3 KNEW THAT THEY HAD SPENT THANKSGIVING TOGETHER.

12:00PM 4 AND SO TYLER HAD TALKED TO ME ABOUT THE FACT THAT HE WAS
12:00PM 5 CONTACTING ELIZABETH HOLMES DIRECTLY ABOUT SOME OF THE CONCERNS
12:00PM 6 THAT HE HAD SEEN BOTH IN THE RESEARCH AND DEVELOPMENT LAB AND
12:00PM 7 BASED ON WHAT WE HAD BEEN SEEING IN THE CLINICAL LAB.

12:00PM 8 Q. CAN I ASK YOU TO TAKE A LOOK IN YOUR BINDER AT TAB 1660.
12:01PM 9 DO YOU HAVE IT?

12:01PM 10 A. YES.

12:01PM 11 Q. AND DO YOU RECOGNIZE THE DOCUMENT AT 1660?

12:01PM 12 A. YES.

12:01PM 13 Q. AND WHAT IS IT?

12:01PM 14 A. SO THIS IS A LETTER THAT TYLER HAD WRITTEN DIRECTLY TO
12:01PM 15 ELIZABETH HOLMES ABOUT SOME OF THE FAILURES THAT -- OR SOME OF
12:01PM 16 THE CONCERNS THAT HE HAD HAD WITH SOME OF THE ASSAYS THAT WE
12:01PM 17 WERE RUNNING SPECIFICALLY WITH SYPHILIS.

12:01PM 18 Q. AND YOU'RE NOT ON THIS EMAIL; IS THAT CORRECT?

12:01PM 19 A. THAT IS CORRECT.

12:01PM 20 Q. AND SO WHEN DID YOU HAVE AN OPPORTUNITY TO SEE IT?

12:01PM 21 A. SO I HAD SEEN THIS DOCUMENT BECAUSE AFTER I HAD HAD MY
12:01PM 22 CONVERSATION WITH SUNNY, ESSENTIALLY I MET WITH TYLER SHULTZ
12:01PM 23 ABOUT THE FACT THAT I HAD HAD A CONVERSATION WITH SUNNY, AND I
12:01PM 24 WAS MEETING WITH HIM TO HAVE DINNER WITH HIS GRANDFATHER, WHO
12:01PM 25 WAS ONE OF THE BOARD MEMBERS.

12:01PM 1 AND TYLER HAD SHOWN ME THIS LETTER THAT HE HAD BASICALLY
12:01PM 2 TAKEN AND KEPT RIGHT BEFORE WE HAD HAD DINNER WITH HIS
12:01PM 3 GRANDFATHER TO TALK ABOUT THE THINGS THAT WE WERE SEEING AT
12:01PM 4 THERANOS.

12:01PM 5 Q. AND IS 1660 A FAIR COPY OF THE EMAIL THAT YOU PREVIOUSLY
12:01PM 6 SAW?

12:01PM 7 A. YES.

12:01PM 8 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 1660
12:02PM 9 INTO EVIDENCE.

12:02PM 10 MR. COOPERSMITH: YOUR HONOR, I OBJECT ON THE
12:02PM 11 GROUNDS OF HEARSAY, AND ALSO I WOULD NOTE THAT ESPECIALLY THE
12:02PM 12 LAST TWO PARAGRAPHS ARE HEARSAY WITHIN HEARSAY.

12:02PM 13 THE COURT: AS TO THE HEARSAY OBJECTION?

12:02PM 14 MR. BOSTIC: SO, YOUR HONOR, I THINK THIS IS
12:02PM 15 ADMISSIBLE FOR A NONHEARSAY PURPOSE, SPECIFICALLY TO SHOW
12:02PM 16 NOTICE TO THE DEFENDANTS IN THIS CASE.

12:02PM 17 I PLAN TO INTRODUCE NEXT A VERSION OF THIS EMAIL THAT GOES
12:02PM 18 TO MR. BALWANI.

12:02PM 19 SO THIS IS FOR THE PURPOSE OF NOTICE.

12:02PM 20 THE COURT: IT WOULD SEEM THAT YOU SHOULD INTRODUCE
12:02PM 21 THAT OTHER DOCUMENT FIRST. I DON'T SEE THE CONNECTION WITH --

12:02PM 22 MR. BOSTIC: VERY WELL.

12:02PM 23 THE COURT: SO I'LL SUSTAIN THE OBJECTION AT THIS
12:02PM 24 POINT.

12:02PM 25 BY MR. BOSTIC:

12:02PM 1 Q. IF I COULD ASK YOU, MS. CHEUNG, TO TURN THE PAGE TO 1662.

12:03PM 2 DO YOU SEE THAT 1662 IS THE SAME EMAIL INCLUDING A FORWARD

12:03PM 3 OF THE EMAIL TO DANIEL YOUNG AND THE DEFENDANT, MR. BALWANI?

12:03PM 4 MR. COOPERSMITH: I'M SORRY, YOUR HONOR. I DON'T

12:03PM 5 HAVE A COPY IN MY BINDER. 1662?

12:03PM 6 MR. BOSTIC: WE CAN PROVIDE AN EXTRA COPY,

12:03PM 7 YOUR HONOR.

12:03PM 8 DOES THE COURT HAVE A COPY?

12:03PM 9 THE COURT: I DO.

12:03PM 10 (PAUSE IN PROCEEDINGS.)

12:03PM 11 THE COURT: MR. BOSTIC, YOU CAN PROCEED.

12:04PM 12 MR. BOSTIC: OKAY. I THINK THE GOVERNMENT JUST

12:04PM 13 OFFERED 1662 INTO EVIDENCE.

12:04PM 14 MR. COOPERSMITH: NO OBJECTION, YOUR HONOR.

12:04PM 15 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

12:04PM 16 (GOVERNMENT'S EXHIBIT 1662 WAS RECEIVED IN EVIDENCE.)

12:04PM 17 MR. BOSTIC: OKAY. MS. WACHS, IF WE CAN ZOOM IN ON

12:04PM 18 THE FIRST THREE PARAGRAPHS OR SO FROM MR. SHULTZ.

12:04PM 19 Q. SO, MS. CHEUNG, IS THIS THE EMAIL THAT YOU PREVIOUSLY SAW

12:04PM 20 THAT MR. SHULTZ SENT TO ELIZABETH HOLMES?

12:04PM 21 A. YES.

12:04PM 22 Q. AND IN PARAGRAPH 1 DO YOU SEE THAT THERE'S SOME DISCUSSION

12:04PM 23 ABOUT DISCREPANCIES RELATING TO CV'S?

12:04PM 24 A. YES.

12:04PM 25 Q. AND CAN YOU REMIND US AT A HIGH LEVEL WHAT YOU OBSERVED

12:04PM 1 REGARDING CV'S AT THERANOS?

12:04PM 2 A. SO THE CV'S -- SO, FOR EXAMPLE, IN OUR SOP'S WE HAD IT

12:05PM 3 DICTATED THAT THE CV WOULD BE 20 PERCENT, BUT SOMETIMES THEY

12:05PM 4 WOULD COME OUT HIGHER THAN THAT. SO IT WOULD BE -- I THINK IN

12:05PM 5 THE EXAMPLE THAT WAS GIVEN EARLIER IT WAS SOMETHING LIKE

12:05PM 6 33 PERCENT.

12:05PM 7 SO WHAT WE ARE SEEING IS SOMETHING IN COMPARISON TO WHAT

12:05PM 8 WE WERE TELLING PEOPLE WHAT OUR CV'S WERE, THAT THERE WAS WAY

12:05PM 9 MORE VARIANCE IN THE ACTUAL STUDIES THAT WE WERE RUNNING.

12:05PM 10 Q. MS. WACHS, IF YOU CAN ZOOM OUT AND BACK IN ON THE LAST TWO

12:05PM 11 PARAGRAPHS ON THAT PAGE.

12:05PM 12 AND, MS. CHEUNG, DO YOU SEE THE PARAGRAPH IN THE TOP OF

12:05PM 13 THIS SELECTION TALKS ABOUT SOME CLAIMS THAT MAY HAVE REPORTED

12:05PM 14 THAT THERANOS TESTS WERE THE MOST ACCURATE AND THE MOST

12:05PM 15 PRECISE?

12:05PM 16 A. YES.

12:05PM 17 Q. AND BASED ON YOUR EXPERIENCE WORKING HANDS ON WITH THE

12:06PM 18 THERANOS TESTS, DID YOU VIEW THEM AS THE MOST ACCURATE AND THE

12:06PM 19 MOST PRECISE?

12:06PM 20 A. NO.

12:06PM 21 Q. AND LET'S ZOOM OUT AND ZOOM IN ON THE TOP PART OF THE

12:06PM 22 PAGE, PLEASE.

12:06PM 23 GENERALLY SPEAKING, MS. CHEUNG, DID YOU AGREE WITH -- LET

12:06PM 24 ME ASK IT A DIFFERENT WAY.

12:06PM 25 ARE YOU FAMILIAR WITH THE POINTS RAISED BY MR. SHULTZ IN

12:06PM 1 THIS COMMUNICATION TO MS. HOLMES?

12:06PM 2 A. YES.

12:06PM 3 Q. AND GENERALLY SPEAKING, WERE THEY CONSISTENT WITH WHAT YOU
12:06PM 4 OBSERVED WHEN YOU WERE AT THERANOS?

12:06PM 5 A. THEY WERE CONSISTENT WITH SOME OF MY CONCERNS AT THERANOS.

12:06PM 6 Q. AND ON THE SCREEN DO YOU SEE THAT ON APRIL 11TH, 2014,
12:06PM 7 MS. HOLMES FORWARDED THAT MESSAGE, INCLUDING THOSE POINTS, TO
12:06PM 8 THE DEFENDANT, MR. BALWANI?

12:06PM 9 A. YES.

12:06PM 10 Q. WE CAN PUT THAT ASIDE. THANK YOU, MS. WACHS.

12:06PM 11 AFTER YOUR MEETING WITH MR. BALWANI, DID YOU MAKE ANY
12:07PM 12 DECISIONS ABOUT YOUR EMPLOYMENT AT THE COMPANY?

12:07PM 13 A. YES.

12:07PM 14 Q. WHAT DID YOU DECIDE?

12:07PM 15 A. SO I HAD DECIDED TO RESIGN FROM THE COMPANY AFTER THAT
12:07PM 16 MEETING.

12:07PM 17 Q. AND WHY DID YOU MAKE THAT DECISION AT THAT TIME?

12:07PM 18 A. I WAS VERY UNCOMFORTABLE WITH THE PROSPECT THAT I WAS JUST
12:07PM 19 SUPPOSED TO PROCESS PATIENT SAMPLES WITHOUT ANY QUESTIONS
12:07PM 20 CONSIDERING ALL OF THE EVIDENCE THAT I HAD HELPED DEVELOP TO
12:07PM 21 SHOW THAT WE WERE HAVING SO MANY QUALITY CONTROL FAILURES,
12:07PM 22 THERE WERE LOTS OF LAB PROCESSING ISSUES, THAT FUNDAMENTALLY I
12:07PM 23 JUST DIDN'T TRUST THE EDISON SYSTEM AND DEVICES, AND I JUST
12:07PM 24 COULDN'T HANDLE THE FACT THAT WE KNEW WE WERE MAKING MISTAKES
12:07PM 25 WITH PATIENT TESTING AND THAT WE WERE NOT NOTIFYING THEM, AND

12:07PM 1 SO I DECIDED TO LEAVE. I COULDN'T DO IT ANY MORE.

12:07PM 2 Q. WHEN YOU LEFT THERANOS, DID YOU HAVE OTHER EMPLOYMENT
12:07PM 3 LINED UP?

12:07PM 4 A. NO.

12:07PM 5 Q. AFTER YOU LEFT THERANOS, WAS THAT THE END OF YOUR CONTACT
12:07PM 6 WITH THE COMPANY?

12:08PM 7 A. THAT WAS THE END OF MY CONTACT WITH THE COMPANY, YES.

12:08PM 8 Q. LET ME ASK YOU TO LOOK --

12:08PM 9 A. OH, SORRY. NO, THAT WASN'T THE END OF MY CONTACT WITH THE
12:08PM 10 COMPANY.

12:08PM 11 Q. LET ME ASK YOU TO LOOK, AND THIS MIGHT REFRESH YOUR
12:08PM 12 MEMORY, AT TAB 2567.

12:08PM 13 A. YES.

12:08PM 14 Q. AND DO YOU RECOGNIZE THAT DOCUMENT?

12:08PM 15 A. YES.

12:08PM 16 Q. AND WHAT IS THAT?

12:08PM 17 A. SO THIS IS A LETTER FROM BOIES SCHILLER, WHO WAS THE LAW
12:08PM 18 FIRM REPRESENTING THERANOS. AND THEY ESSENTIALLY SHOWED UP
12:08PM 19 OUTSIDE OF MY NEW WORKPLACE SAYING THAT -- ESSENTIALLY THEY HAD
12:08PM 20 SOMEONE SIT OUTSIDE OF MY WORKPLACE THAT WAS WAITING FOR ME,
12:08PM 21 AND THEY HAD SOMEONE BASICALLY HAND ME THIS LETTER AFTER I HAD
12:08PM 22 GOTTEN OUT OF WORK.

12:08PM 23 Q. AND IS 2567 AN ACCURATE COPY OF THE LETTER THAT YOU
12:08PM 24 RECEIVED?

12:08PM 25 A. YES.

12:08PM 1 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT OFFERS 2567.

12:08PM 2 MR. COOPERSMITH: HEARSAY OBJECTION, YOUR HONOR.

12:09PM 3 MR. BOSTIC: YOUR HONOR, THIS IS NOT BEING OFFERED
12:09PM 4 FOR THE TRUTH. THIS IS A COMMUNICATION FROM COMPANY COUNSEL.
12:09PM 5 I THINK THE POINT IS THAT IT WAS SENT.

12:09PM 6 THE COURT: THE RELEVANCE THEN OF THIS DOCUMENT,
12:09PM 7 THEN, MR. BOSTIC, IF IT'S NOT OFFERED FOR THE TRUTH?

12:09PM 8 MR. BOSTIC: I DON'T BELIEVE THERE ARE FACTUAL
12:09PM 9 ASSERTIONS THAT ARE BEING OFFERED FOR THE TRUTH, YOUR HONOR.

12:09PM 10 THE RELEVANCE OF THIS IS THAT IT SHOWS THE COMPANY'S
12:09PM 11 RESPONSE TO THIS EMPLOYEE WHO HAD LEFT, AND I THINK WE'LL
12:09PM 12 EXPLORE WITH THE WITNESS OTHER EVENTS THAT WERE HAPPENING
12:09PM 13 AROUND THIS TIME THAT PRECIPITATED THE SENDING OF THIS LETTER.

12:09PM 14 THE COURT: THIS IS NOT OFFERED FOR THE TRUTH OF
12:09PM 15 ANYTHING ASSERTED IN HERE.

12:09PM 16 IT'S OFFERED THAT SHE RECEIVED THE DOCUMENT. SHE RECEIVED
12:09PM 17 COMMUNICATION FROM THIS LAW FIRM ON BEHALF OF THE COMPANY?

12:10PM 18 MR. BOSTIC: YES, YOUR HONOR.

12:10PM 19 THE COURT: AND THAT'S IT.

12:10PM 20 AND YOU'RE NOT ASKING THIS JURY TO RECEIVE ANY OF THE
12:10PM 21 INFORMATION ON THE TWO PAGES FOR THE TRUTH OF THE MATTER
12:10PM 22 ASSERTED?

12:10PM 23 MR. BOSTIC: CERTAINLY NOT, YOUR HONOR.

12:10PM 24 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THE
12:10PM 25 COURT WILL ALLOW THIS TO BE RECEIVED INTO EVIDENCE, 2567, THIS

12:10PM 1 LETTER. IT'S A TWO PAGE LETTER.

12:10PM 2 HOWEVER, IT IS NOT ADMITTED FOR THE TRUTH OF THE MATTER

12:10PM 3 ASSERTED IN THE LETTER. IT'S NOT OFFERED FOR THE TRUTH OF THE

12:10PM 4 MATTER OF ANY OF THE WRITINGS IN THE LETTER. IT'S OFFERED TO

12:10PM 5 SUPPORT THIS WITNESS'S TESTIMONY AS TO RECEIVING COMMUNICATION

12:10PM 6 FROM THIS LAW FIRM ON BEHALF OF THE COMPANY.

12:10PM 7 IS THAT THE LIMITATION?

12:10PM 8 MR. BOSTIC: YES, YOUR HONOR.

12:10PM 9 THE COURT: ALL RIGHT. THANK YOU.

12:10PM 10 WITH THAT LIMITATION, IT'S ADMITTED.

12:10PM 11 (GOVERNMENT'S EXHIBIT 2567 WAS RECEIVED IN EVIDENCE.)

12:11PM 12 MR. BOSTIC: MAY WE PUBLISH, YOUR HONOR?

12:11PM 13 THE COURT: YES.

12:11PM 14 MR. BOSTIC: MS. WACHS, LET'S ZOOM IN ON THE TOP

12:11PM 15 PARAGRAPH.

12:11PM 16 Q. AND, MS. CHEUNG, THIS IS A LETTER THAT YOU RECEIVED FROM

12:11PM 17 BOIES SCHILLER?

12:11PM 18 A. YES.

12:11PM 19 Q. AND WHAT IS BOIES SCHILLER?

12:11PM 20 A. IT'S A LAW FIRM.

12:11PM 21 Q. AND WHOM DID BOIES SCHILLER IN CONNECTION WITH THESE

12:11PM 22 EVENTS?

12:11PM 23 A. BOIES SCHILLER REPRESENTED ELIZABETH HOLMES AND --

12:11PM 24 THERANOS -- ELIZABETH HOLMES AND SUNNY BALWANI.

12:11PM 25 Q. AND, MS. WACHS, IF WE CAN JUST ZOOM OUT AND CAPTURE THE

12:11PM 1 DATE OF THIS LETTER, PLEASE.

12:11PM 2 THANK YOU.

12:11PM 3 THIS LETTER, MS. CHEUNG, WAS SENT IN JUNE OF 2015; IS THAT

12:11PM 4 CORRECT?

12:11PM 5 A. THAT IS CORRECT.

12:11PM 6 Q. AND WAS THAT MORE THAN A YEAR AFTER YOU LEFT THE COMPANY?

12:11PM 7 A. YES.

12:11PM 8 Q. AND LET'S LOOK AT THE FIRST PARAGRAPH.

12:12PM 9 IT SAYS, "WE HAVE REASON TO BELIEVE THAT YOU HAVE

12:12PM 10 DISCLOSED CERTAIN OF THE COMPANY'S TRADE SECRETS AND OTHER

12:12PM 11 CONFIDENTIAL INFORMATION WITHOUT AUTHORIZATION."

12:12PM 12 DO YOU SEE THAT?

12:12PM 13 A. YES.

12:12PM 14 Q. AND IT THEN SAYS, "WE ALSO HAVE REASON TO BELIEVE THAT YOU

12:12PM 15 HAVE DONE SO IN CONNECTION WITH MAKING FALSE AND DEFAMATORY

12:12PM 16 STATEMENTS ABOUT THE COMPANY FOR THE PURPOSE OF HARMING ITS

12:12PM 17 BUSINESS."

12:12PM 18 DO YOU SEE THAT?

12:12PM 19 A. YES.

12:12PM 20 Q. AND YOU'RE THEN DIRECTED TO CEASE AND DESIST.

12:12PM 21 AND THE REST OF THE LETTER CONTAINS -- CONTINUES IN THAT

12:12PM 22 SAME VEIN; IS THAT CORRECT?

12:12PM 23 A. THAT IS CORRECT.

12:12PM 24 Q. AROUND THIS TIME DO YOU HAVE A SENSE OF WHY THIS LETTER

12:12PM 25 WAS SENT IN JUNE OF 2015? WHAT ELSE WAS HAPPENING DURING THAT

12:12PM 1 TIME PERIOD?

12:12PM 2 A. I HAD GOTTEN CONTACTED BY "THE WALL STREET JOURNAL," AND
12:12PM 3 THEY WERE BASICALLY GOING TO DO AN INVESTIGATIVE REPORT ON
12:12PM 4 THERANOS AND THE FACT THAT THERE WAS AN UNDERSTANDING THAT
12:12PM 5 THERE WERE LAB FAILURES THAT WERE OCCURRING WITHIN THE
12:12PM 6 ORGANIZATION AND THAT WHAT THEY'RE CLAIMING TO HAVE DONE WAS
12:13PM 7 NOT ACTUALLY GOING ON.

12:13PM 8 Q. AND DID YOU HAVE ANY INVOLVEMENT IN CONNECTION WITH THAT
12:13PM 9 INVESTIGATION BY "THE WALL STREET JOURNAL"?

12:13PM 10 A. YES.

12:13PM 11 Q. AND WHAT WAS YOUR INVOLVEMENT?

12:13PM 12 A. I WAS ONE OF THE SOURCES FOR THE JOURNAL ARTICLE.

12:13PM 13 Q. OKAY. AND AS A SOURCE, WERE YOU ON THE RECORD OR WERE YOU
12:13PM 14 AN ANONYMOUS SOURCE AT THAT TIME?

12:13PM 15 A. I WAS AN ANONYMOUS SOURCE.

12:13PM 16 Q. SO, IN OTHER WORDS, YOUR INVOLVEMENT WAS NONPUBLIC AT THIS
12:13PM 17 TIME IN JUNE OF 2015?

12:13PM 18 A. CORRECT.

12:13PM 19 Q. THAT ARTICLE SAYS OR IT ACCUSES YOU OF MAKING STATEMENTS
12:13PM 20 ABOUT THE COMPANY FOR THE PURPOSE OF HARMING ITS BUSINESS.

12:13PM 21 WAS THAT YOUR MOTIVE IN SPEAKING TO "THE
12:13PM 22 WALL STREET JOURNAL" IN THIS TIME PERIOD?

12:13PM 23 A. NO, NOT AT ALL.

12:13PM 24 Q. WHAT WAS YOUR MOTIVATION?

12:13PM 25 A. THE MAIN MOTIVATION WAS I THINK PEOPLE NEEDED TO

12:13PM 1 UNDERSTAND WHAT WAS ACTUALLY OCCURRING AND THE FACT THAT THE
12:14PM 2 COMPANY WAS REALLY RISKING PATIENT SAFETY AT THAT POINT, AND I
12:14PM 3 FELT THAT I HAD DONE AN IMMENSE AMOUNT OF EFFORT TO REPORT
12:14PM 4 CONCERNS INTERNALLY, BUT WASN'T BEING HEARD, AND IT SEEMED KIND
12:14PM 5 OF LIKE A LAST RESORT FOR PEOPLE TO RECOGNIZE WHAT WAS ACTUALLY
12:14PM 6 HAPPENING AND THE CONSEQUENCES OF THE FACT THAT THERE WAS THIS
12:14PM 7 TECHNOLOGY THAT WAS SEVERELY UNRELIABLE THAT WAS BEING USED ON
12:14PM 8 PATIENTS.

12:14PM 9 Q. MS. CHEUNG, WHEN YOU WERE WORKING AT THERANOS, DID YOU
12:14PM 10 EVER COMMUNICATE WITH MS. HOLMES OR MR. BALWANI BY TEXT
12:14PM 11 MESSAGE?

12:14PM 12 A. NO.

12:14PM 13 Q. OKAY.

12:14PM 14 YOUR HONOR, AT THIS TIME THE GOVERNMENT MOVES INTO
12:14PM 15 EVIDENCE OR OFFERS INTO EVIDENCE EXHIBIT 5387H. THIS IS AN
12:14PM 16 EXHIBIT CONTAINING TEXT MESSAGES BETWEEN MR. BALWANI AND
12:14PM 17 MS. HOLMES.

12:14PM 18 I UNDERSTAND THAT THE DEFENSE HAS AGREED TO ITS
12:15PM 19 ADMISSIBILITY, BUT I'LL YIELD TO MR. COOPERSMITH?

12:15PM 20 MR. COOPERSMITH: YES, YOUR HONOR.

12:15PM 21 THE COURT: ALL RIGHT. THANK YOU.

12:15PM 22 THIS IS -- IS THIS ABOUT 432 PAGES?

12:15PM 23 MR. BOSTIC: I'M NOT SURE IT'S THAT LONG,
12:15PM 24 YOUR HONOR. I BELIEVE IT HAS SOME GAPS IN THE MIDDLE.

12:15PM 25 THE COURT: I SEE. YES.

12:15PM 1 MR. BOSTIC: I BELIEVE IT IS SEVERAL HUNDRED PAGES
12:15PM 2 THOUGH.

12:15PM 3 THE COURT: ALL RIGHT. THANK YOU.

12:15PM 4 THIS EXHIBIT IS ADMITTED WITHOUT OBJECTION, AND IT MAY BE
12:15PM 5 PUBLISHED.

12:15PM 6 (GOVERNMENT'S EXHIBIT 5387H WAS RECEIVED IN EVIDENCE.)

12:15PM 7 MR. BOSTIC: THANK YOU, YOUR HONOR.

12:15PM 8 AND, MS. WACHS, IF WE COULD GO TO -- I BELIEVE IT'S
12:15PM 9 PAGE 89 OF THE EXHIBIT. IF WE CAN ZOOM IN ON THE RELEVANT
12:15PM 10 MESSAGE.

12:15PM 11 Q. MS. CHEUNG, DO YOU SEE ON THE SCREEN IN FRONT OF YOU A
12:16PM 12 TEXT MESSAGE SENT ON JUNE 26TH, 2015?

12:16PM 13 A. YES.

12:16PM 14 Q. AND IF YOU RECALL, WHAT WAS THE DATE OF THE LETTER FROM
12:16PM 15 BOIES SCHILLER THAT WE WERE JUST LOOKING AT?

12:16PM 16 A. THE 26TH OF 2015 -- JUNE 26TH OF 2015.

12:16PM 17 Q. THE SAME DAY?

12:16PM 18 A. THE SAME DAY.

12:16PM 19 Q. AND WE SEE HERE A TEXT MESSAGE, AND IT INDICATES IT WAS
12:16PM 20 SENT BY SUNNY BALWANI TO ELIZABETH HOLMES.

12:16PM 21 DO YOU SEE THAT?

12:16PM 22 A. YES.

12:16PM 23 Q. AND THE TEXT SAYS, "I AM OK SENDING LETTER TO ERIKA AS IN
12:16PM 24 HEATHERS EMAIL."

12:16PM 25 DO YOU SEE THAT?

12:16PM 1 A. YES.

12:16PM 2 Q. AND DO YOU HAVE AN UNDERSTANDING AS TO WHO HEATHER WAS AT

12:16PM 3 THERANOS?

12:16PM 4 A. HEATHER WAS THE COUNSEL UNDER BOIES SCHILLER AT THAT TIME

12:16PM 5 AND WAS ALSO THE COUNSEL AT THERANOS.

12:16PM 6 Q. MS. WACHS, LET'S LOOK NOW AT PAGE 80, PLEASE, OF THE

12:16PM 7 EXHIBIT.

12:17PM 8 WE'VE GONE BACK IN TIME A LITTLE BIT, AND NOW WE'RE

12:17PM 9 LOOKING AT MESSAGES FROM MAY 2015.

12:17PM 10 DO YOU SEE THAT, MS. CHEUNG?

12:17PM 11 A. YES.

12:17PM 12 Q. THERE'S A MESSAGE HERE FROM MR. BALWANI TO MS. HOLMES ON

12:17PM 13 MAY 13TH REFERENCING "A NEGATIVE REVIEW FROM SOMEONE FROM THE

12:17PM 14 NEWARK LAB."

12:17PM 15 DO YOU SEE THAT?

12:17PM 16 A. YES.

12:17PM 17 Q. AND MS. HOLMES RESPONDS, "I SAW IT. WE'LL GET THEM."

12:17PM 18 DO YOU SEE THAT?

12:17PM 19 A. YES.

12:17PM 20 Q. AND LET'S GO DOWN TO THE NEXT MESSAGE.

12:17PM 21 WE THEN SEE A MESSAGE FROM MR. BALWANI TO MS. HOLMES.

12:17PM 22 HE'S SAYING, "I AM NARROWING THIS DOWN IN CLIA. DOWN TO 5

12:17PM 23 PEOPLE."

12:17PM 24 AND THEN HE SAYS, "WILL NAIL THIS," AND AN EXPLETIVE.

12:17PM 25 DO YOU SEE THAT?

12:17PM 1 A. YES.

12:17PM 2 Q. AND LET'S GO TO THE NEXT PAGE.

12:18PM 3 WE SEE SOME ADDITIONAL CORRESPONDENCE WITH MS. HOLMES

12:18PM 4 ASKING "WHO DO U THINK."

12:18PM 5 AND "NOW WE HAVE LEGAL GROUNDS."

12:18PM 6 DO YOU SEE THAT?

12:18PM 7 A. YES.

12:18PM 8 Q. AND LET'S ZOOM IN ON THE NEXT BANK OF MESSAGES, PLEASE.

12:18PM 9 WE THEN SEE MS. HOLMES SAYING, "IF TYLER THINKING ABOUT

12:18PM 10 GEORGE FYI AT RIGHT TIME."

12:18PM 11 DO YOU SEE THAT?

12:18PM 12 A. YEAH.

12:18PM 13 Q. AND YOU MENTIONED THAT TYLER SHULTZ WAS RELATED TO A

12:18PM 14 MEMBER OF THE THERANOS BOARD OF DIRECTORS?

12:18PM 15 A. THAT IS CORRECT.

12:18PM 16 Q. AND WHO WAS THAT MEMBER?

12:18PM 17 A. GEORGE SHULTZ WAS ONE OF THE BOARD MEMBERS, AND HE WAS THE

12:18PM 18 EX-SECRETARY OF STATE OF THE U.S. DURING THE RONALD REAGAN

12:18PM 19 YEARS.

12:18PM 20 Q. AND DOWN BELOW THERE'S A MESSAGE FROM SUNNY BALWANI TO

12:18PM 21 ELIZABETH HOLMES SAYING, "THIS ONE IS FAIRLY EASY TO GET AHEAD

12:18PM 22 OF. THIS ENTIRE EMAIL IS BASED ON TYLER AND ROCHELLE AND MAYBE

12:19PM 23 ADAM."

12:19PM 24 DO YOU SEE THAT?

12:19PM 25 A. YES.

12:19PM 1 Q. AND LET'S ZOOM OUT AND CONTINUE DOWN.

12:19PM 2 AND MR. BALWANI CONTINUES ON MAY 13TH, "EXTREMELY SERIOUS

12:19PM 3 LEGAL IMPLICATIONS. HE BASICALLY VIOLATED AND SHARED OUR TRADE

12:19PM 4 SECRETS DOWN TO MACHINE NAMES."

12:19PM 5 DO YOU SEE THAT?

12:19PM 6 A. YES.

12:19PM 7 Q. AND MR. BALWANI SAYS, "AND ASSAYS AND WHAT DEVICE."

12:19PM 8 AND THEN HE SAYS, "IT IS TYLER, ERIKA, AND ADAM."

12:19PM 9 DO YOU SEE THAT?

12:19PM 10 A. YES.

12:19PM 11 Q. AND DO YOU UNDERSTAND THAT ERIKA IN THAT MESSAGE REFERS TO

12:19PM 12 YOU?

12:19PM 13 A. YES.

12:19PM 14 Q. AND DURING THIS TIME, WAS IT YOUR INTENTION TO DISCLOSE

12:19PM 15 THERANOS TRADE SECRETS TO HURT THE COMPANY?

12:19PM 16 A. NO.

12:19PM 17 Q. WE CAN PUT THAT ASIDE. THANK YOU, MS. WACHS.

12:19PM 18 MS. CHEUNG, DID THERE COME A TIME WHEN YOU DISCUSSED YOUR

12:19PM 19 CONCERNS ABOUT THERANOS WITH THE AUTHORITIES?

12:20PM 20 A. YEAH. I HAD SENT A LETTER ADDRESSING MY CONCERNS TO

12:20PM 21 REGULATORS TO THE CENTER OF MEDICAID AND MEDICAL.

12:20PM 22 Q. I'M SORRY, MS. CHEUNG. TAKE YOUR TIME.

12:20PM 23 (PAUSE IN PROCEEDINGS.)

12:20PM 24 MR. BOSTIC: PLEASE LET US KNOW IF YOU WOULD LIKE TO

12:20PM 25 TAKE A BREAK.

12:20PM 1 THE COURT: MS. CHEUNG, WOULD YOU LIKE A MOMENT?

12:20PM 2 THE WITNESS: NO. I'M OKAY.

12:20PM 3 BY MR. BOSTIC:

12:20PM 4 Q. YOU MENTIONED THAT THERE WAS A TIME WHEN YOU DISCUSSED
12:20PM 5 THERANOS WITH REGULATORS?

12:20PM 6 A. YES.

12:20PM 7 Q. AND WHEN DID THAT HAPPEN?

12:20PM 8 A. SO THAT HAD HAPPENED, THAT HAD HAPPENED SOON AFTER I
12:21PM 9 RECEIVED THE LETTER FROM BOIES SCHILLER, I HAD CONTACTED A
12:21PM 10 LAWYER WHO SAID THAT THAT WAS AN OPTION TO CONTACT REGULATORS,
12:21PM 11 AND SO I HAD SUBMITTED A REPORT AND A FILING WITH THE CENTER OF
12:21PM 12 MEDICAID AND MEDICARE SERVICES ABOUT THE CONCERNS THAT I HAD
12:21PM 13 HAD IN THE CLINICAL LAB.

12:21PM 14 Q. AND WHAT WAS THE REASON AT THAT TIME TO CONTACT THE
12:21PM 15 CENTERS FOR MEDICAID AND MEDICARE SERVICES ABOUT THERANOS?

12:21PM 16 A. BECAUSE THEY WERE THE REGULATORY AGENCY IN CHARGE OF
12:21PM 17 ALLOWING PEOPLE TO KNOW, OR ALLOWING COMPANIES TO BE ABLE TO
12:21PM 18 TEST PATIENT SAMPLES.

12:21PM 19 SO I FIGURED IF I HAD SUBMITTED A LETTER TO THE
12:21PM 20 REGULATORS, THEY COULD CONDUCT AN INVESTIGATION TO SEE IF
12:21PM 21 THERANOS WAS OF THE STANDARD THAT IT NEEDED TO BE IN ORDER TO
12:21PM 22 TEST PATIENT SAMPLES.

12:21PM 23 SO IT WAS REALLY TO GIVE THEM REFERENCE TO THE CONCERNS
12:22PM 24 THAT I HAD SEEN TO THE LAB SO THEY COULD CONDUCT AN
12:22PM 25 INVESTIGATION TO SAY WHETHER OR NOT THEY WERE ALLOWED TO TEST

12:22PM 1 PATIENTS OR NOT.

12:22PM 2 Q. AND IN YOUR COMMUNICATIONS WITH THE REGULATORS ABOUT
12:22PM 3 THERANOS, DID YOU RAISE THE SAME CONCERNS THAT WE HAVE BEEN
12:22PM 4 DISCUSSING TODAY AND YESTERDAY?

12:22PM 5 A. YES.

12:22PM 6 MR. BOSTIC: MAY I HAVE A MOMENT, YOUR HONOR?

12:22PM 7 THE COURT: YES.

12:22PM 8 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

12:22PM 9 MR. BOSTIC: NO FURTHER QUESTIONS.

12:22PM 10 THANK YOU, YOUR HONOR.

12:22PM 11 THANK YOU, MS. CHEUNG.

12:22PM 12 THE COURT: CROSS-EXAMINATION.

12:23PM 13 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

12:23PM 14 MAY I REMOVE MY MASK.

12:23PM 15 THE COURT: YES.

12:23PM 16 **CROSS-EXAMINATION**

12:23PM 17 BY MR. COOPERSMITH:

12:23PM 18 Q. GOOD AFTERNOON, MS. CHEUNG.

12:23PM 19 IF YOU NEED TO TAKE A BREAK AT ANY TIME OR YOU NEED WATER
12:23PM 20 OR ANYTHING, JUST LET ME KNOW, AND I'LL STOP AND WE CAN DO
12:23PM 21 THAT.

12:23PM 22 A. OKAY.

12:23PM 23 Q. ALL RIGHT. SO JUST TO START WITH THE EASY QUESTIONS. YOU
12:23PM 24 WENT TO THE UNIVERSITY OF CALIFORNIA BERKELEY; IS THAT RIGHT?

12:23PM 25 A. THAT IS RIGHT.

12:23PM 1 Q. AND DID YOU GRADUATE IN 2013?

12:23PM 2 A. THAT IS CORRECT.

12:23PM 3 Q. OKAY. AND YOU SAID THAT THERANOS WAS YOUR FIRST JOB AFTER

12:23PM 4 COLLEGE?

12:23PM 5 A. YES.

12:23PM 6 Q. AND YOU WERE EXCITED TO WORK AT THERANOS?

12:23PM 7 A. YES.

12:23PM 8 Q. BECAUSE YOU THOUGHT IT WAS A CUTTING EDGE COMPANY AND THAT

12:23PM 9 WOULD BE A GOOD PLACE FOR YOU TO START YOUR CAREER?

12:23PM 10 A. THAT IS CORRECT.

12:23PM 11 Q. OKAY. WHEN YOU FIRST APPLIED TO THERANOS, DO YOU KNOW --

12:23PM 12 AND I THINK YOU MAY BE SAID SOMETHING ABOUT THIS ON DIRECT WHEN

12:23PM 13 MR. BOSTIC WAS QUESTIONING YOU, BUT WHAT JOB DID YOU INITIALLY

12:24PM 14 APPLY FOR IF YOU CAN REMEMBER?

12:24PM 15 A. IT WASN'T VERY CLEAR. SO IT WAS SOMETHING BETWEEN EITHER

12:24PM 16 A LAB ASSOCIATE FOR R&D OR IN THE CLINICAL LAB, BUT I DIDN'T

12:24PM 17 ACTUALLY APPLY. I JUST GAVE THEM MY RESUME, AND THEY KIND OF

12:24PM 18 FUNNELED ME TO THE APPROPRIATE POSITION.

12:24PM 19 Q. SO DO I UNDERSTAND THAT THEY OFFERED YOU A JOB THAT WAS

12:24PM 20 CONSISTENT WITH THE NEEDS THAT THE COMPANY HAD AT THAT TIME?

12:24PM 21 DOES THAT SOUND FAIR?

12:24PM 22 A. YES.

12:24PM 23 Q. OKAY. DID YOU HAVE A PREFERENCE BETWEEN WORKING IN THE

12:24PM 24 CLIA LAB OR THE R&D LAB?

12:24PM 25 A. AT THAT TIME I THINK I HAD A PREFERENCE FOR THE RESEARCH

12:24PM 1 AND DEVELOPMENT LAB.

12:24PM 2 Q. AND WAS THAT BECAUSE IT WAS SORT OF MORE FREEDOM TO CREATE
12:24PM 3 AND AT THAT PART AS OPPOSED TO CLIA?

12:24PM 4 A. I THINK I DIDN'T HAVE A GOOD UNDERSTANDING OF WHAT CLIA
12:24PM 5 LAB WAS TO BE HONEST, AND I WAS MORE INTERESTED IN GETTING INTO
12:24PM 6 RESEARCH IN MY LONG-TERM CAREER, SO THAT WAS THE APPEAL.

12:25PM 7 Q. OKAY. AND WHAT I JUST SAID WAS THAT THE CASE, LIKE IN
12:25PM 8 RESEARCH AND DEVELOPMENT, DO YOU UNDERSTAND THAT THE PURPOSE OF
12:25PM 9 A RESEARCH AND DEVELOPMENT LABORATORY IS TO, YOU KNOW,
12:25PM 10 BASICALLY INVENT NEW PRODUCTS AND NEW CONCEPTS; RIGHT?

12:25PM 11 A. YES.

12:25PM 12 Q. AND THE PURPOSE OF SOMEONE WORKING IN A CLIA, OR A
12:25PM 13 CLINICAL LAB, IS TO FOLLOW SPECIFIC DIRECTIONS AND STANDARD
12:25PM 14 OPERATING PROCEDURES AND THINGS OF THAT NATURE; IS THAT FAIR?

12:25PM 15 A. THAT'S FAIR.

12:25PM 16 Q. AND IS THAT ONE OF THE REASONS WHY R&D SEEMED MORE
12:25PM 17 ATTRACTIVE?

12:25PM 18 A. NO. NO.

12:25PM 19 I HONESTLY, GOING INTO THE COMPANY, WASN'T CLEAR ON THAT
12:25PM 20 DISTINCTION. SO I WAS JUST MORE INTERESTED IN JUST BEING
12:25PM 21 USEFUL.

12:25PM 22 Q. AND AT SOME POINT, THOUGH, DID YOU -- WHEN YOU STARTED
12:25PM 23 THERE -- I THINK YOU STARTED IN R&D; IS THAT RIGHT?

12:25PM 24 A. THAT IS CORRECT.

12:25PM 25 Q. OKAY. AT SOME POINT, AND WE'LL TALK ABOUT THIS A LITTLE

12:25PM 1 MORE LATER, BUT DID THE COMPANY MOVE YOU INTO AT LEAST

12:25PM 2 PARTIALLY A ROLE IN THE CLIA LAB?

12:25PM 3 A. THAT IS CORRECT.

12:25PM 4 Q. AND WERE YOU HAPPY WITH THAT DECISION TO HAVE YOU DO SOME

12:26PM 5 CLIA WORK OR NOT?

12:26PM 6 A. INITIALLY I WAS UPSET, BUT THEN I WAS FINE.

12:26PM 7 Q. AND WHY WERE YOU UPSET?

12:26PM 8 A. BECAUSE, AGAIN, FOR MY LONG-TERM CAREER, I WAS MORE

12:26PM 9 INTERESTED IN DOING RESEARCH.

12:26PM 10 Q. AND YOU EXPRESSED THAT VIEW, THAT YOU PREFERRED THE R&D

12:26PM 11 SIDE; IS THAT RIGHT?

12:26PM 12 A. YES.

12:26PM 13 Q. AND THE COMPANY MADE AN ACCOMMODATION WHERE THEY TOLD YOU

12:26PM 14 THAT THEY WOULD STILL KEEP YOU IN THE R&D LAB, BUT THEY DID

12:26PM 15 NEED HELP IN CLIA AT THAT PARTICULAR MOMENT; IS THAT RIGHT?

12:26PM 16 A. I DON'T KNOW IF THEY MADE AN ACCOMMODATION, BUT AT LEAST

12:26PM 17 NOT IN THE TRANSITION. IT WAS VERY CLEAR THAT I WAS GOING TO

12:26PM 18 MOVE FULL TIME TO THE CLINICAL LAB.

12:26PM 19 Q. I JUST WANT TO SHOW YOU AN EXHIBIT, AND I HAVE SOME TO

12:26PM 20 HAND UP, I THINK.

12:27PM 21 YOUR HONOR, I DO HAVE COPIES FOR THE COURT AS WELL.

12:27PM 22 BUT MAY I HAND THEM TO THE WITNESS?

12:27PM 23 THE COURT: YES.

12:27PM 24 MR. COOPERSMITH: THANK YOU.

12:27PM 25 (HANDING.)

12:27PM 1 THE COURT: DOES THE GOVERNMENT HAVE THESE AS WELL?

12:27PM 2 MR. BOSTIC: YES, YOUR HONOR. THANK YOU.

12:27PM 3 BY MR. COOPERSMITH:

12:27PM 4 Q. AND, MS. CHEUNG, I'M SORRY FOR THE WEIGHT OF THE BINDERS.

12:27PM 5 A. THAT'S FINE.

12:27PM 6 Q. BUT WE'LL BE REFERRING TO THEM OVER THE COURSE OF MY

12:27PM 7 QUESTIONING.

12:27PM 8 A. THAT'S FINE.

12:27PM 9 Q. SO I'D LIKE TO HAVE YOU LOOK AT EXHIBIT 2, IT'S 20043.

12:28PM 10 YOU MIGHT FIND IT IN VOLUME 2.

12:28PM 11 A. IT'S IN VOLUME 2.

12:28PM 12 CAN YOU REPEAT THE NUMBER.

12:28PM 13 Q. I'M SORRY?

12:28PM 14 A. CAN YOU REPEAT THE NUMBER.

12:28PM 15 Q. OH, YES. IT'S 20043.

12:31PM 16 A. OKAY. I'M HERE.

12:31PM 17 Q. THANKS. IS THIS AN EMAIL STRING THAT YOU AND OTHERS WERE

12:31PM 18 ON IN MID-DECEMBER OF 2013?

12:31PM 19 A. YES.

12:31PM 20 Q. AND DOES THIS RELATE TO THE TOPIC THAT WE WERE JUST

12:31PM 21 DISCUSSING ABOUT THE ASSIGNMENT THAT YOU WERE GIVEN TO MOVE TO

12:31PM 22 THE CLIA LAB AT LEAST IN PART?

12:31PM 23 A. YEAH.

12:31PM 24 Q. OKAY.

12:31PM 25 YOUR HONOR, I WOULD OFFER EXHIBIT 20043.

12:31PM 1 MR. BOSTIC: YOUR HONOR, I'M SORRY. I JUST NOTICED
12:31PM 2 THAT THIS DOESN'T HAVE A BATES NUMBER.

12:31PM 3 MR. COOPERSMITH: I DON'T KNOW HOW TO RESPOND TO
12:31PM 4 THAT OTHER THAN TO SAY THIS IS AN EMAIL THAT SHE RECALLS AND SO
12:31PM 5 WE'RE OFFERING IT AS AN EXHIBIT.

12:31PM 6 THE COURT: DID YOU BATES STAMP YOUR EXHIBITS?

12:31PM 7 MR. COOPERSMITH: THIS ONE DOESN'T HAVE A BATE
12:31PM 8 STAMP.

12:31PM 9 THE COURT: DID YOU BATE STAMP YOUR EXHIBITS?

12:31PM 10 MR. COOPERSMITH: APPARENTLY NOT FOR THIS ONE,
12:31PM 11 YOUR HONOR.

12:31PM 12 MR. BOSTIC: NO OBJECTION TO THE ADMISSION OF THIS
12:31PM 13 DOCUMENT, YOUR HONOR.

12:31PM 14 THE COURT: I'M SORRY?

12:31PM 15 MR. BOSTIC: NO OBJECTION TO THE ADMISSION OF THIS
12:31PM 16 DOCUMENT.

12:31PM 17 THE COURT: I'M JUST CURIOUS IS THIS GOING TO BE AN
12:31PM 18 ISSUE GOING FORWARD? WE'LL DISCUSS THIS AFTERWARDS, BUT 20043
12:31PM 19 WILL BE ADMITTED, AND IT MAY BE PUBLISHED.

12:31PM 20 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

12:31PM 21 (DEFENDANT'S EXHIBIT 20043 WAS RECEIVED IN EVIDENCE.)

12:31PM 22 BY MR. COOPERSMITH:

12:31PM 23 Q. AND IF WE CAN ZOOM IN ON THE BOTTOM OF PAGE 1 JUST SO WE
12:31PM 24 CAPTURE THE EARLIEST EMAIL IN TIME.

12:31PM 25 THIS IS AN EMAIL FROM AURELIE SOUPPE. AM I SAYING THAT

12:31PM 1 RIGHT?

12:31PM 2 A. SOUPPE.

12:31PM 3 Q. SOUPPE. AND WHO WAS SHE?

12:31PM 4 A. AURELIE SOUPPE WAS ALSO A LAB ASSOCIATE WHO WORKED ON THE

12:31PM 5 EDISONS.

12:31PM 6 Q. SO THE SAME POSITION YOU HAD, BUT A COLLEAGUE OF YOURS

12:31PM 7 BASICALLY?

12:31PM 8 A. THAT IS CORRECT.

12:31PM 9 Q. OKAY. AND THEN SHE WROTE TO SHARADA. AND IS THAT

12:31PM 10 SHARADA SIVARAMAN?

12:31PM 11 A. YES.

12:31PM 12 Q. AND WHO WAS DR. SIVARAMAN?

12:31PM 13 A. DR. SIVARAMAN WAS THE HEAD OF THE ELISA TEAM. SO SHE WAS

12:31PM 14 THE LEAD SCIENTIST OF THAT DEPARTMENT IN RESEARCH AND

12:31PM 15 DEVELOPMENT.

12:31PM 16 Q. AND DO YOU KNOW ANYTHING ABOUT DR. SIVARAMAN'S BACKGROUND?

12:31PM 17 A. SHE HAS A PH.D.

12:31PM 18 Q. DO YOU KNOW WHAT THE PH.D. IS IN?

12:31PM 19 A. NO.

12:31PM 20 Q. AND IS IT BIOLOGICAL CHEMISTRY?

12:31PM 21 A. I COULDN'T TELL YOU.

12:31PM 22 Q. OKAY. WE'LL COME BACK TO THAT.

12:31PM 23 ANYWAY, IF YOU LOOK AT THE EMAIL THAT MS. SOUPPE SENT, IT

12:31PM 24 READS, "ME, ROMINA, ERIKA, AND JAMIE WERE ALL HOPING TO SPEAK

12:31PM 25 WITH YOU ABOUT OUR REASSIGNMENT TO CLIA. WE UNDERSTAND THAT

12:32PM 1 YOU ARE VERY BUSY, BUT WE ARE ALL DEEPLY UPSET ABOUT THE
12:32PM 2 TRANSFER AND WOULD PREFER TO STAY IN ELISA. PLEASE LET US KNOW
12:32PM 3 WHEN YOU ARE AVAILABLE."

12:32PM 4 DO YOU SEE THAT?

12:32PM 5 A. YES.

12:32PM 6 Q. AND YOU DIDN'T WRITE THIS EMAIL?

12:32PM 7 A. THAT'S CORRECT.

12:32PM 8 Q. AND YOU'RE ONE OF THE PEOPLE REFERENCED IN IT?

12:32PM 9 A. YES.

12:32PM 10 Q. AND DID YOU SHARE THE VIEW THAT MS. SOUPPE EXPRESSED?

12:32PM 11 A. YEAH, SORT OF. I MEAN, I WAS UPSET THAT I WAS HAVING TO
12:32PM 12 CHANGE ROLES FROM RESEARCH AND DEVELOPMENT.

12:32PM 13 AGAIN, MY CAREER WAS MORE ORIENTED TO RESEARCH EVEN PRIOR
12:32PM 14 TO COMING TO THERANOS, BUT, YEAH, AT THAT MOMENT WE WERE
12:32PM 15 CONCERNED ABOUT WHY WE WERE BEING SWITCHED.

12:32PM 16 Q. AND I TAKE IT YOU DISCUSSED THAT -- I'M SORRY.

12:32PM 17 IS IT RIGHT THAT YOU DISCUSSED THAT ISSUE AMONG THE GROUP
12:32PM 18 THAT ARE REFERENCED IN THE EMAIL THAT I JUST READ?

12:32PM 19 A. YES.

12:32PM 20 Q. OKAY. AND THEN DO YOU SEE IF YOU GO TO THE NEXT EMAIL
12:32PM 21 ABOVE THAT DR. SIVARAMAN RESPONDED TO MS. SOUPPE AS WELL AS YOU
12:33PM 22 AND YOUR OTHER TWO COLLEAGUES?

12:33PM 23 DO YOU SEE THAT?

12:33PM 24 A. YES.

12:33PM 25 Q. AND SHE WROTE, "HI ALL.

12:33PM 1 "I DISCUSSED THIS WITH SUNNY IN MY MEETING TODAY. IT
12:33PM 2 APPEARS THAT YOU WILL NEED TO BE IN THE CLIA FOR 1-2 MONTHS IN
12:33PM 3 THE NEW YEAR. HOWEVER SUNNY DID MENTION THAT EVEN DURING THIS
12:33PM 4 TIME YOU WILL BE ABLE TO REMAIN WITH ELISA AND WORK ON OUR
12:33PM 5 PROJECTS. AS YOU KNOW, CLIA WILL MOVE TO EMC EARLY NEXT YEAR
12:33PM 6 BY THEN MORE FOLKS WILL BE RECRUITED AND AT THAT TIME YOU WILL
12:33PM 7 HAVE THE OPTION OF STAYING ON WITH THE ELISA TEAM."

12:33PM 8 AND THEN IT GOES ON TO SAY, "MY UNDERSTANDING FROM THE
12:33PM 9 MEETING WAS THAT WE ARE REALLY SHORT ON STAFF IN THE CLIA AND
12:33PM 10 WE WILL NEED YOU LADIES TO SUPPORT THIS EFFORT FOR 2 MONTHS."

12:33PM 11 DO YOU SEE THAT?

12:33PM 12 A. YES.

12:33PM 13 Q. AND DID YOU UNDERSTAND THAT DR. SIVARAMAN HAD A DISCUSSION
12:33PM 14 WITH MR. BALWANI ABOUT THIS ISSUE?

12:33PM 15 A. YES.

12:33PM 16 Q. AND IS IT ALSO FAIR TO SAY THAT MR. BALWANI AGREED BASED
12:33PM 17 ON THE PREFERENCE THAT YOU WOULD NOT BE PERMANENTLY ASSIGNED TO
12:34PM 18 CLIA?

12:34PM 19 A. YES.

12:34PM 20 Q. AND AS THINGS WENT FORWARD AFTER THIS, YOU KIND OF WORE
12:34PM 21 TWO HATS, IS THAT RIGHT, AT TIMES?

12:34PM 22 A. NO. I MEAN, I DID WEAR TWO HATS, AND THEN THERE WAS A
12:34PM 23 MOMENT IN A DISCUSSION WHERE IT WAS CLEAR THAT I WAS GOING TO
12:34PM 24 BE PERMANENTLY RESIDED IN CLIA.

12:34PM 25 Q. OKAY. AND ARE YOU SAYING THAT AFTER THIS TIME YOU DIDN'T

12:34PM 1 HAVE ANY MORE R&D RESPONSIBILITIES?

12:34PM 2 A. NO, I DID HAVE R&D RESPONSIBILITIES. BUT WHEN MARK,

12:34PM 3 SPECIFICALLY THE LAB DIRECTOR, CAME IN, IT BECAME VERY CLEAR

12:34PM 4 THAT WE WERE STAYING IN CLIA MORE PERMANENTLY FROM THAT POINT

12:34PM 5 FORWARD AND THAT WE WEREN'T GOING TO BE WORKING WITH THE ELISA

12:34PM 6 TEAM.

12:34PM 7 Q. AND THAT WAS DR. PANDORI WHO TOLD YOU THAT?

12:34PM 8 A. YES.

12:34PM 9 Q. AND THAT WAS IN FEBRUARY OF 2014; IS THAT RIGHT?

12:34PM 10 A. I BELIEVE SO, YES.

12:34PM 11 Q. OKAY. ALL RIGHT.

12:34PM 12 LET'S GO BACK TO THE BEGINNING WHEN YOU FIRST CAME TO

12:34PM 13 THERANOS AND YOU WERE OFFERED THE JOB. THAT WAS A GOOD DAY

12:34PM 14 WHEN YOU GOT THAT JOB; IS THAT RIGHT?

12:34PM 15 A. YEAH.

12:34PM 16 Q. OKAY. AND THEN YOU INITIALLY WERE REPORTING TO

12:35PM 17 DR. SIVARAMAN?

12:35PM 18 A. THAT IS CORRECT.

12:35PM 19 Q. OKAY. AND I JUST WANTED YOU TO HAVE A LOOK, JUST SO WE'RE

12:35PM 20 CLEAR ON THIS, ABOUT DR. SIVARAMAN.

12:35PM 21 CAN YOU TAKE A LOOK AT EXHIBIT 10224. AND IT SHOULD BE IN

12:35PM 22 YOUR FIRST BINDER.

12:35PM 23 A. I HAVE IT.

12:35PM 24 Q. THANK YOU. AND DO YOU RECOGNIZE THIS AS DR. SIVARAMAN'S

12:36PM 25 RESUME?

12:36PM 1 A. YES.

12:36PM 2 Q. AND JUST TAKING A LOOK AT THE SECOND PAGE OF THE EXHIBIT,

12:36PM 3 DO YOU SEE THERE'S A SECTION CALLED EDUCATION?

12:36PM 4 A. YES.

12:36PM 5 Q. AND DOES THAT, LOOKING AT THAT SECTION, DOES THAT REFRESH

12:36PM 6 YOUR MEMORY THAT DR. SIVARAMAN HAD A PH.D. IN BIOLOGICAL

12:36PM 7 CHEMISTRY?

12:36PM 8 A. YES, BUT I HAVE NEVER SEEN THIS BEFORE.

12:36PM 9 Q. OKAY. YOU HAVE NEVER SEEN THE RESUME BEFORE?

12:36PM 10 A. I HAVE NEVER SEEN THE RESUME.

12:36PM 11 Q. BUT NOW YOU REMEMBER THAT SHE HAD A PH.D. IN BIOLOGICAL

12:36PM 12 CHEMISTRY?

12:36PM 13 A. YES.

12:36PM 14 MR. COOPERSMITH: YOUR HONOR, I WOULD OFFER

12:36PM 15 EXHIBIT 10224.

12:36PM 16 MR. BOSTIC: YOUR HONOR, AUTHENTICATION AND

12:36PM 17 FOUNDATION.

12:36PM 18 MR. COOPERSMITH: YOUR HONOR, THE AUTHENTICATION IS

12:36PM 19 BY STIPULATION WITH THE GOVERNMENT BASED ON THE BATES NUMBER,

12:36PM 20 AND THE FOUNDATION IS THAT SHE RECOGNIZED DR. SIVARAMAN AND SHE

12:36PM 21 RECOGNIZES THIS AS HER RESUME.

12:37PM 22 THE COURT: SHE'S NEVER SEEN THE RESUME BEFORE SHE

12:37PM 23 SAID.

12:37PM 24 MR. COOPERSMITH: RIGHT.

12:37PM 25 BUT GIVEN THE AUTHENTICITY AND WHO THE PERSON IS, HER

12:37PM 1 MEMORY OF THE PARTICULAR CONTENT OF IT WITH THE PH.D., I THINK
12:37PM 2 THAT'S SUFFICIENT TO ADMIT IT.

12:37PM 3 MR. BOSTIC: YOUR HONOR, I THINK THERE'S A
12:37PM 4 MISUNDERSTANDING ABOUT THE NATURE OF THE STIPULATION BETWEEN
12:37PM 5 THE PARTIES. WE HAVE NOT STIPULATED TO THE AUTHENTICITY OF
12:37PM 6 THIS DOCUMENT OR DOCUMENTS LIKE IT.

12:37PM 7 I THINK IT ALSO SUFFERS FROM HEARSAY PROBLEMS.

12:37PM 8 THE COURT: WELL, THIS IS WHY I ASKED THAT QUESTION.
12:37PM 9 WE'LL CLEAR UP ON THE BATES AND ALL OF THAT TO GET THAT.

12:37PM 10 BUT YOU'RE ASKING THAT THAT -- THERE SEEMS TO BE SOME
12:37PM 11 HEARSAY ON THIS.

12:37PM 12 MR. COOPERSMITH: MAYBE I CAN ASK A FEW MORE
12:37PM 13 QUESTIONS, YOUR HONOR, TO SEE IF I CAN LAY A FOUNDATION.

12:37PM 14 THE COURT: WELL, YOU KNOW, JUST -- YOU WOULD LIKE
12:37PM 15 THIS INTRODUCED INTO EVIDENCE AS EVIDENCE OF THE RESUME OF
12:37PM 16 DR. SIVARAMAN; IS THAT IT?

12:38PM 17 MR. COOPERSMITH: YES, YOUR HONOR.

12:38PM 18 THE COURT: I'LL ADMIT IT FOR THAT PURPOSE.

12:38PM 19 MR. COOPERSMITH: THANK YOU.

12:38PM 20 THE COURT: IT CAN BE PUBLISHED.

12:38PM 21 (DEFENDANT'S EXHIBIT 10224 WAS RECEIVED IN EVIDENCE.)

12:38PM 22 BY MR. COOPERSMITH:

12:38PM 23 Q. SO, DO YOU SEE, MS. CHEUNG, THAT IT HAS DR. SIVARAMAN AT
12:38PM 24 THE TOP, AND THERE'S SOME REDACTED SECTION, WHICH WE'RE NOT
12:38PM 25 GOING TO SHOW HER ADDRESS TO THE PUBLIC, AND THAT SORT OF

12:38PM 1 THING.

12:38PM 2 DO YOU UNDERSTAND THAT?

12:38PM 3 A. YEAH.

12:38PM 4 Q. AND THEN IT TALKS ABOUT HIGHLIGHTS OF HER CAREER. AND,
12:38PM 5 FOR EXAMPLE, THE FIRST BULLET POINT OVER HIGHLIGHTS DO YOU SEE
12:38PM 6 THAT IT SAYS OVER THREE YEARS OF EXPERIENCE IN RECOMBINANT
12:38PM 7 EXPRESSION AND PURIFICATION OF PROTEINS, HUMAN AND BACTERIAL
12:38PM 8 E.COLI.

12:38PM 9 DO YOU SEE THAT?

12:38PM 10 A. YES.

12:38PM 11 Q. AND IT GOES ON. AND I WON'T READ EACH ONE, BUT IT HAS
12:38PM 12 OTHER HIGHLIGHTS OF DR. SIVARAMAN'S CAREER.

12:38PM 13 DO YOU SEE THAT?

12:38PM 14 A. YES.

12:38PM 15 Q. AND THEN IT HAS IN THE NEXT SECTION HER RESEARCH
12:38PM 16 EXPERIENCE.

12:39PM 17 DO YOU SEE THAT?

12:39PM 18 A. YES.

12:39PM 19 Q. AND IT LOOKS LIKE IT SAYS POST-DOCTORAL RESEARCH AT THE
12:39PM 20 UNIVERSITY OF CALIFORNIA AT BERKELEY?

12:39PM 21 A. YES, UH-HUH.

12:39PM 22 Q. AND IT SAYS HER ADVISOR WAS PROFESSOR JACK KIRSCH.

12:39PM 23 DO YOU SEE THAT?

12:39PM 24 A. YES.

12:39PM 25 Q. AND IF YOU GO TO PAGE 3 OF THE DOCUMENT, DO YOU SEE

12:39PM 1 THERE'S A SECTION CALLED "PRESENTATIONS"?

12:39PM 2 A. YES.

12:39PM 3 Q. AND DO YOU SEE THAT DR. SIVARAMAN AND JACK KIRSCH, IT
12:39PM 4 LOOKS LIKE, MADE A PRESENTATION TOGETHER, AND IT HAS A NAME OF
12:39PM 5 IT. IT IS CALLED "NARROWING THE SUBSTRATE SPECIFICITY OF A
12:39PM 6 BROADLY SUBSTRATE SPECIFIC ENZYME," AND IT GOES ON.

12:39PM 7 DO YOU SEE THAT?

12:39PM 8 A. YES.

12:39PM 9 Q. AND THEN IF YOU GO DOWN BELOW THERE ARE REFERENCES, AND
12:39PM 10 ONE OF DR. SIVARAMAN'S REFERENCES IS DR. JACK KIRSCH.

12:39PM 11 DO YOU SEE THAT?

12:39PM 12 A. YES.

12:39PM 13 Q. AND IT SAYS HE'S IN THE DEPARTMENT OF MOLECULAR AND CELL
12:39PM 14 BIOLOGY AT THE UNIVERSITY OF CALIFORNIA BERKELEY?

12:40PM 15 A. YEP.

12:40PM 16 Q. AND SO WHAT I WAS WONDERING IS DID YOU EVER TAKE A CLASS
12:40PM 17 FROM PROFESSOR KIRSCH?

12:40PM 18 A. NO.

12:40PM 19 Q. AND DID YOU KNOW HIM AS A PROFESSOR WHEN YOU WERE AT THE
12:40PM 20 UNIVERSITY?

12:40PM 21 A. NO.

12:40PM 22 Q. WERE YOU IN THE DEPARTMENT OF MOLECULAR AND CELL BIOLOGY?

12:40PM 23 A. YES.

12:40PM 24 Q. AND IT JUST SO HAPPENED THAT YOU NEVER CROSSED PATHS WITH
12:40PM 25 DR. JACK KIRSCH?

12:40PM 1 A. I DON'T THINK SO. I DON'T REMEMBER.

12:40PM 2 Q. OKAY. YOU RESPECTED DR. SIVARAMAN?

12:40PM 3 A. YES.

12:40PM 4 Q. DID YOU THINK THAT DR. SIVARAMAN WAS PART OF SOME KIND OF

12:40PM 5 FRAUDULENT SCHEME?

12:40PM 6 A. NO.

12:40PM 7 Q. OKAY. WHEN YOU STARTED THE COMPANY, I BELIEVE YOU GOT AN

12:40PM 8 OFFER LETTER; IS THAT RIGHT?

12:40PM 9 A. CAN YOU REPEAT THAT QUESTION.

12:40PM 10 Q. WELL, LET ME JUST SHOW IT TO YOU. THAT MIGHT BE EASIER.

12:41PM 11 CAN YOU TAKE A LOOK AT EXHIBIT 20020.

12:41PM 12 AND DO YOU SEE THAT'S A LETTER DATED OCTOBER 14TH OF 2013?

12:41PM 13 A. YES.

12:41PM 14 Q. AND DOES IT HAVE YOUR SIGNATURE ON THE SECOND PAGE?

12:41PM 15 A. YES.

12:41PM 16 Q. AND DID YOU RECOGNIZE THIS AS THE OFFER LETTER EXTENDING

12:41PM 17 AN OFFER TO YOU TO WORK AT THERANOS?

12:41PM 18 A. YES.

12:41PM 19 MR. COOPERSMITH: YOUR HONOR, WE OFFER

12:41PM 20 EXHIBIT 20020.

12:41PM 21 MR. BOSTIC: NO OBJECTION.

12:41PM 22 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

12:41PM 23 (DEFENDANT'S EXHIBIT 20020 WAS RECEIVED IN EVIDENCE.)

12:41PM 24 BY MR. COOPERSMITH:

12:41PM 25 Q. OKAY. LET'S TAKE A LOOK AT SOME OF THIS LETTER.

12:41PM 1 IF YOU ZOOM IN ON THE FIRST PARAGRAPH IT SAYS, "I AM
12:41PM 2 PLEASED TO EXTEND A CONDITIONAL OFFER OF EMPLOYMENT TO YOU AS
12:41PM 3 LAB ASSOCIATE REPORTING TO SHARADA SIVARAMAN," WHO WE JUST
12:42PM 4 DISCUSSED; RIGHT?
12:42PM 5 A. YES.
12:42PM 6 Q. AND IT SAYS, "YOUR PAY RATE WILL BE \$19 PER HOUR."
12:42PM 7 A. THAT IS CORRECT.
12:42PM 8 Q. AND SO AT THE WHOLE TIME YOU WERE AT THERANOS, WERE YOU AN
12:42PM 9 HOURLY EMPLOYEE?
12:42PM 10 A. YES.
12:42PM 11 Q. AND WAS YOUR PAY ALWAYS \$19 AN HOUR?
12:42PM 12 A. YES.
12:42PM 13 Q. AND DID YOU GET OVERTIME?
12:42PM 14 A. YES.
12:42PM 15 Q. AND DID YOU WORK OVERTIME SOMETIMES?
12:42PM 16 A. YES.
12:42PM 17 Q. AND DID A LOT OF PEOPLE IN THE COMPANY WORK OVERTIME?
12:42PM 18 A. YES, WE WERE REQUIRED TO.
12:42PM 19 Q. OKAY. BUT YOU KNEW THAT THAT WAS NECESSARY TO MOVE THE
12:42PM 20 COMPANY FORWARD?
12:42PM 21 A. YES.
12:42PM 22 Q. AND YOU WERE WILLING TO DO THAT; RIGHT?
12:42PM 23 A. YES.
12:42PM 24 Q. AND THEY PAID YOU FOR IT?
12:42PM 25 A. YES.

12:42PM 1 Q. AND THAT WAS AT THIS TIME LIKE A FAIR SALARY IN YOUR VIEW,
12:42PM 2 WASN'T IT?
12:42PM 3 A. YES.
12:42PM 4 Q. DID YOU GET ADDITIONAL BENEFITS IN ADDITION TO THE SALARY?
12:42PM 5 A. LIKE HEALTH BENEFITS?
12:42PM 6 Q. YES.
12:42PM 7 A. I BELIEVE SO.
12:42PM 8 Q. OKAY. AND THEN IT SAYS ALSO IN THE NEXT SENTENCE, "IN
12:42PM 9 ADDITION, YOU'LL BE ELIGIBLE FOR ADDITIONAL PERFORMANCE BASED
12:43PM 10 COMPENSATION OVERTIME."
12:43PM 11 DO YOU SEE THAT?
12:43PM 12 A. YES.
12:43PM 13 Q. AND SO THERE WAS AN ADDITIONAL UPSIDE TO WORKING AT
12:43PM 14 THERANOS, TOO?
12:43PM 15 A. YES.
12:43PM 16 Q. IF YOU GO DOWN A LITTLE FURTHER TO THE FOURTH PARAGRAPH
12:43PM 17 AND YOU SEE THERE'S A PORTION THAT READS, "YOU AGREE THAT YOU
12:43PM 18 WILL NOT, DURING YOUR EMPLOYMENT WITH THE COMPANY, IMPROPERLY
12:43PM 19 USE OR DISCLOSE ANY PROPRIETARY INFORMATION OR TRADE SECRETS OF
12:43PM 20 ANY FORMER EMPLOYER OR OTHER PERSON OR ENTITY AND THAT YOU WILL
12:43PM 21 NOT BRING ON TO THE PREMISES OF THE COMPANY ANY UNPUBLISHED
12:43PM 22 DOCUMENT OR PROPRIETARY INFORMATION BELONGING TO ANY SUCH
12:43PM 23 EMPLOYER, PERSON, OR ENTITY UNLESS CONSENTED TO IN WRITING."
12:43PM 24 DO YOU SEE THAT?
12:43PM 25 A. YES.

12:43PM 1 Q. AND THAT WAS ABOUT HOW THERANOS DID NOT WANT YOU TO GIVE
12:43PM 2 THEM TRADE SECRETS OF OTHER COMPANIES; IS THAT WHAT THAT IS
12:43PM 3 ABOUT?

12:43PM 4 A. CAN I READ IT ONCE MORE?

12:43PM 5 Q. OF COURSE.

12:44PM 6 (PAUSE IN PROCEEDINGS.)

12:44PM 7 THE WITNESS: YES.

12:44PM 8 BY MR. COOPERSMITH:

12:44PM 9 Q. AND YOU UNDERSTAND WITH TECHNOLOGY STARTUPS, IT'S COMMON
12:44PM 10 FOR COMPANIES TO WANT TO PROTECT THEIR INTELLECTUAL PROPERTY?

12:44PM 11 MR. BOSTIC: OBJECTION. FOUNDATION.

12:44PM 12 THE COURT: DO YOU WANT TO LAY A FOUNDATION?

12:44PM 13 BY MR. COOPERSMITH:

12:44PM 14 Q. DO YOU HAVE AN UNDERSTANDING OF THE NEED IN GENERAL FOR
12:44PM 15 COMPANIES TO PROTECT THEIR INTELLECTUAL PROPERTY?

12:44PM 16 A. YES.

12:44PM 17 Q. AND WHAT IS YOUR UNDERSTANDING?

12:44PM 18 A. MY UNDERSTANDING IS THAT THEY WILL ATTEMPT TO KEEP
12:44PM 19 INFORMATION WITHIN THE DOORS OF THE COMPANY TO ENSURE THAT
12:44PM 20 OTHER COMPANIES DON'T TAKE THEIR TRADE SECRETS AND THEIR
12:44PM 21 PROPRIETARY TECHNOLOGY PLANS OR PATENTS OR WHATEVER THEY MIGHT
12:44PM 22 BE DEVELOPING.

12:44PM 23 Q. THANK YOU. AND IS THAT BECAUSE IF COMPANIES' TRADE
12:44PM 24 SECRETS AND INTELLECTUAL PROPERTY WERE RELEASED, ESPECIALLY THE
12:45PM 25 COMPETITORS, THAT COULD HURT THE COMPANY'S BUSINESS; IS THAT

12:45PM 1 RIGHT?

12:45PM 2 MR. BOSTIC: SPECULATION AND FOUNDATION.

12:45PM 3 THE COURT: WELL, OVERRULED. YOU CAN ANSWER THE
12:45PM 4 QUESTION. IF YOU HAVE THE KNOWLEDGE.

12:45PM 5 THE WITNESS: CAN YOU REPEAT THE QUESTION?
12:45PM 6 BY MR. COOPERSMITH:

12:45PM 7 Q. IF I CAN REMEMBER IT.

12:45PM 8 SO DO YOU UNDERSTAND THAT THE REASON WHY COMPANIES ARE
12:45PM 9 PROTECTIVE OF THEIR TRADE SECRETS AND THEIR INTELLECTUAL
12:45PM 10 PROPERTY IS THAT THEY DON'T WANT COMPETITORS TO BE ABLE TO USE
12:45PM 11 THAT TECHNOLOGY FOR THEIR OWN BENEFIT AND THAT WOULD HURT THE
12:45PM 12 COMPANY THAT HAD THE INTELLECTUAL PROPERTY IN THE FIRST PLACE;
12:45PM 13 IS THAT FAIR?

12:45PM 14 A. YES, THAT'S FAIR.

12:45PM 15 Q. OKAY. AND THEN IS IT ALSO CORRECT THAT THERANOS HAD YOU
12:45PM 16 SIGN AN AGREEMENT THAT YOU WOULDN'T RELEASE THERANOS'S
12:45PM 17 INTELLECTUAL PROPERTY WHEN YOU STARTED?

12:45PM 18 A. THAT IS CORRECT.

12:45PM 19 Q. AND IS THAT WHAT THE PARAGRAPH ABOVE THAT REFERS TO, WHERE
12:45PM 20 IT'S THE THIRD PARAGRAPH OF THE LETTER?

12:45PM 21 A. THAT'S IN REFERENCE TO THE NONDISCLOSURE AGREEMENTS OR THE
12:46PM 22 OTHER AGREEMENTS.

12:46PM 23 Q. RIGHT. IT REFERENCES A DOCUMENT ABOUT CALLING
12:46PM 24 "CONFIRMATION OF RECEIPT AND AGREEMENT TO HANDBOOK POLICIES."

12:46PM 25 DO YOU SEE THAT?

12:46PM 1

A. YES.

12:46PM 2

Q. IF YOU COULD FLIP YOUR BINDER TO 2009.

12:46PM 3

I'M SORRY. THE EXHIBIT NUMBER IS 20029.

12:46PM 4

AND DO YOU RECOGNIZE EXHIBIT 20029 AS THE -- ANOTHER

12:47PM 5

AGREEMENT THAT YOU SIGNED WHEN YOU JOINED THERANOS?

12:47PM 6

A. YES.

12:47PM 7

Q. OKAY.

12:47PM 8

YOUR HONOR, WE OFFER EXHIBIT 20029.

12:47PM 9

MR. BOSTIC: NO OBJECTION.

12:47PM 10

THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

12:47PM 11

(DEFENDANT'S EXHIBIT 20029 WAS RECEIVED IN EVIDENCE.)

12:47PM 12

BY MR. COOPERSMITH:

12:47PM 13

Q. IF WE CAN TAKE A LOOK AT THE TITLE.

12:47PM 14

DO YOU SEE THE TITLE, MS. CHEUNG?

12:47PM 15

A. YES.

12:47PM 16

Q. AND IF WE GO TO THE LAST PAGE OF THIS DOCUMENT -- I'M

12:47PM 17

SORRY, IT'S PAGE 5 OF THIS EXHIBIT.

12:47PM 18

IS THAT YOUR SIGNATURE?

12:47PM 19

A. YES.

12:47PM 20

Q. AND IT IS SIGNED THE SAME DATE YOU STARTED OCTOBER 14TH,

12:47PM 21

2013?

12:47PM 22

A. THAT IS CORRECT.

12:47PM 23

Q. AND IF YOU FLIP TO THE FIRST PAGE, WHICH IS PAGE 1 OF THIS

12:47PM 24

EXHIBIT, DO YOU SEE THERE'S A SECTION CALLED CONFIDENTIAL

12:47PM 25

INFORMATION?

12:47PM 1 A. YES.

12:47PM 2 Q. AND DO YOU HAVE AN UNDERSTANDING OF WHAT YOU WERE AGREEING

12:47PM 3 TO WHEN YOU SIGNED THAT?

12:47PM 4 A. YES.

12:47PM 5 Q. WHAT IS THAT?

12:47PM 6 A. ESSENTIALLY THAT I WAS NOT TO DISCUSS BASICALLY THE

12:48PM 7 ONGOING'S OF THE COMPANY; I WAS NOT TO DISCUSS WHAT WAS

12:48PM 8 HAPPENING INSIDE OF THE COMPANY TO EXTERNAL PEOPLE AND

12:48PM 9 STAKEHOLDERS; AND THAT WE HAD TO KEEP QUIET, BASICALLY THE

12:48PM 10 NATURE OF OUR TECHNOLOGY, THE NATURE OF OUR ROLES AND

12:48PM 11 RESPONSIBILITIES, AWAY FROM ORGANIZATIONS AND STAKEHOLDERS.

12:48PM 12 Q. OKAY. WE'LL GET BACK TO THIS A LITTLE LATER.

12:48PM 13 BUT IS AMONG THE PEOPLE THAT YOU WEREN'T SUPPOSED TO

12:48PM 14 DISCLOSE COMPANY CONFIDENTIAL INFORMATION TO, WOULD THAT

12:48PM 15 INCLUDE JOURNALISTS, FOR EXAMPLE?

12:48PM 16 A. YES.

12:48PM 17 Q. WHEN YOU SIGNED THE AGREEMENT THAT WE JUST LOOKED AT, AND

12:48PM 18 ALSO YOUR OFFER LETTER, YOU DIDN'T THINK THAT WAS UNUSUAL OR

12:48PM 19 ANYTHING, DID YOU?

12:48PM 20 A. NOT AT THE TIME, NO.

12:48PM 21 Q. AND IT JUST SEEMED LIKE A ROUTINE PART OF JOINING A TECH

12:49PM 22 COMPANY IN SILICON VALLEY, DIDN'T IT?

12:49PM 23 A. I WASN'T TOO SURE. IT WAS MY FIRST JOB, BUT I ASSUME SO.

12:49PM 24 Q. OKAY. NOW, PRIOR TO JOINING THERANOS, YOU HAD NEVER

12:49PM 25 WORKED IN A CLINICAL LABORATORY BEFORE; IS THAT CORRECT?

12:49PM 1 A. THAT IS CORRECT.

12:49PM 2 Q. AND YOU HAD NO INVOLVEMENT PREVIOUSLY WORKING AT THERANOS
12:49PM 3 IN VALIDATION STUDIES FOR BLOOD TESTING ASSAYS OR ANYTHING LIKE
12:49PM 4 THAT, DID YOU?

12:49PM 5 A. NO.

12:49PM 6 Q. DID YOU UNDERSTAND THAT THERE WAS A SET OF REGULATIONS
12:49PM 7 THAT GOVERNED THE OPERATION OF A CLINICAL LAB SUCH AS THE ONE
12:49PM 8 THAT THERANOS WAS RUNNING?

12:49PM 9 A. YES.

12:49PM 10 Q. AND WERE YOU FAMILIAR WITH EACH AND EVERY ONE OF THOSE
12:49PM 11 REGULATIONS?

12:49PM 12 A. NO.

12:49PM 13 Q. WERE YOU FAMILIAR WITH SOME OF THEM?

12:49PM 14 A. SOME OF THEM.

12:50PM 15 Q. OKAY. AND I JUST WANT TO HAVE YOU TAKE A LOOK AT IN YOUR
12:50PM 16 FIRST BINDER EXHIBIT 7603.

12:50PM 17 DO YOU SEE IT'S LIKE A MULTIPAGE DOCUMENT THAT GOES FROM
12:50PM 18 BATES NUMBER 700 ON THE FIRST PAGE TO BATES NUMBER 822.

12:50PM 19 DO YOU SEE THAT?

12:50PM 20 A. YES.

12:50PM 21 Q. AND SO THAT -- SO IF THEY'RE ALL CONSECUTIVE, THAT WOULD
12:50PM 22 MAKE IT ABOUT 122 PAGES?

12:50PM 23 A. HUH --

12:50PM 24 Q. DOUBLE SIDED?

12:50PM 25 A. DOUBLE SIDED, YES.

12:50PM 1 Q. SO WITHOUT COUNTING EACH ONE, DOES THIS HAVE THE HEFT OF
12:51PM 2 ABOUT 122 PAGE DOCUMENT?

12:51PM 3 A. YES.

12:51PM 4 Q. OKAY. AND DO YOU RECOGNIZE THOSE AS REGULATIONS GOVERNING
12:51PM 5 THE OPERATION OF CLINICAL LABS IN THE UNITED STATES?

12:51PM 6 A. THAT IS CORRECT.

12:51PM 7 Q. AND AT THE TOP, YOU WERE NOT THE PERSON THAT THE COMPANY
12:51PM 8 WOULD LOOK TO TO INTERPRET OR ADVISE ABOUT CLINICAL LAB -- I'M
12:51PM 9 SORRY, I'LL ASK IT AGAIN. MY APOLOGIES.

12:51PM 10 AT THERANOS, YOU WERE NOT THE PERSON THAT ANYONE LOOKED TO
12:51PM 11 TO ADVISE ABOUT THE INTERPRETATION OR APPLICABILITY OF THE
12:51PM 12 CLINICAL LAB REGULATIONS, WERE YOU?

12:51PM 13 A. NO.

12:51PM 14 Q. OKAY. AND THE COMPANY ACTUALLY HAD LEGAL COUNSEL THAT
12:51PM 15 WOULD HELP WITH THAT PROCESS.

12:51PM 16 DO YOU UNDERSTAND THAT?

12:51PM 17 A. THAT IS CORRECT.

12:51PM 18 Q. AND THE COMPANY ALSO HAD SCIENTISTS WHO WERE WORKING ON
12:51PM 19 ADMINISTERING THAT RESPONSIBILITY; IS THAT RIGHT?

12:52PM 20 A. THAT IS RIGHT.

12:52PM 21 Q. AND ONE OF THEM WAS DR. ADAM ROSENDORFF?

12:52PM 22 A. THAT IS CORRECT.

12:52PM 23 Q. AND HE WAS THE LAB DIRECTOR WHEN YOU WERE WORKING THERE?

12:52PM 24 A. HE WAS THE MEDICAL DIRECTOR.

12:52PM 25 Q. SO HE WAS A MEDICAL DOCTOR?

12:52PM 1 A. YES.

12:52PM 2 Q. AND DO YOU UNDERSTAND THAT HE HAD A BACKGROUND IN

12:52PM 3 PATHOLOGY?

12:52PM 4 A. YES.

12:52PM 5 Q. AND DO YOU UNDERSTAND THAT HE HAD COME FROM A DIFFERENT

12:52PM 6 LAB AT THE UNIVERSITY OF PITTSBURGH BEFORE HE JOINED THERANOS?

12:52PM 7 A. I DIDN'T KNOW THAT.

12:52PM 8 Q. YOU DIDN'T KNOW HIS BACKGROUND?

12:52PM 9 A. YEAH.

12:52PM 10 Q. OKAY. BUT YOU UNDERSTOOD THAT YOU THINK HE WAS THE

12:52PM 11 MEDICAL DIRECTOR?

12:52PM 12 A. YES.

12:52PM 13 Q. IS THAT EQUIVALENT TO THE LABORATORY DIRECTOR?

12:52PM 14 A. YES. WE ALSO HAD A LABORATORY DIRECTOR LABORATORY

12:52PM 15 DIRECTOR, TOO.

12:52PM 16 Q. WHO WAS THE LABORATORY DIRECTOR?

12:52PM 17 A. MARK PANDORI.

12:52PM 18 Q. AND DO YOU RECOGNIZE THAT DR. ROSENDORFF AND DR. PANDORI

12:52PM 19 WERE CO-LABORATORY DIRECTORS?

12:52PM 20 A. UM, YES.

12:52PM 21 Q. OKAY. BUT ON THE SORT OF ORGANIZATIONAL STRUCTURE --

12:52PM 22 A. UH-HUH.

12:52PM 23 Q. -- DID DR. PANDORI WORK FOR DR. ROSENDORFF OR DID

12:52PM 24 DR. ROSENDORFF WORK FOR DR. PANDORI, OR NEITHER OF THOSE?

12:52PM 25 A. I WAS UNDER THE UNDERSTANDING THAT THEY WERE BOTH EQUALS

12:53PM 1 WITHIN THE HIERARCHAL STRUCTURE.

12:53PM 2 Q. SO THEY HAD TWO LAB DIRECTORS AS FAR AS YOU COULD RECALL;
12:53PM 3 IS THAT RIGHT?

12:53PM 4 A. I THINK SO.

12:53PM 5 Q. I WANT TO HAVE YOU TAKE A LOOK AT THE PARTICULAR
12:53PM 6 REGULATION THAT DEALS WITH LAB DIRECTORS, AND IF I COULD JUST
12:53PM 7 REFER TO YOU IN YOUR FIRST BINDER EXHIBIT 7603DD, DOUBLE D?

12:53PM 8 A. CAN YOU REPEAT THAT AGAIN.

12:53PM 9 Q. OF COURSE. IT'S EXHIBIT 7603 AND THEN TWO CAPITAL D'S.

12:53PM 10 A. OH, GOT IT. OKAY.

12:53PM 11 Q. DO YOU -- DO YOU HAVE THAT EXHIBIT IN FRONT OF YOU?

12:53PM 12 A. YES.

12:53PM 13 Q. THANK YOU.

12:53PM 14 AND DO YOU SEE ON THE BOTTOM RIGHT OF THE FIRST PAGE
12:53PM 15 THERE'S A REGULATION THAT IS NUMBERED 493.1441?

12:54PM 16 A. YOU SAID IT'S 7603DD?

12:54PM 17 Q. YES.

12:54PM 18 A. AND THEN THE REGULATION IS 493.

12:54PM 19 Q. .1441?

12:54PM 20 A. I DON'T HAVE THAT.

12:54PM 21 Q. OKAY.

12:54PM 22 MAY I APPROACH, YOUR HONOR?

12:54PM 23 THE COURT: I DON'T HAVE IT, EITHER.

12:54PM 24 MR. COOPERSMITH: LET'S SEE IF I CAN GET SOME
12:54PM 25 COPIES.

12:54PM 1 THE COURT: IT'S NOT AN EXHIBIT IN MY BINDER.

12:54PM 2 MR. COOPERSMITH: OKAY. SORRY ABOUT THAT,
12:54PM 3 YOUR HONOR.

12:54PM 4 LET ME HAND THE COURT'S COPY UP FIRST, AND THEN WE'LL
12:55PM 5 WRESTLE UP ANOTHER ONE.

12:55PM 6 (PAUSE IN PROCEEDINGS.)

12:55PM 7 MR. BOSTIC: YOUR HONOR, THE GOVERNMENT HAS THE SAME
12:55PM 8 OF -- THE OTHER DD THAT DOESN'T HAVE THE REGULATION THAT
12:55PM 9 COUNSEL IS REFERRING TO.

12:55PM 10 THE COURT: SO IT SOUNDS LIKE OUR BINDERS DON'T HAVE
12:55PM 11 WHAT YOU HANDED UP TO THE COURT.

12:55PM 12 MR. COOPERSMITH: YOUR HONOR, I'M GOING TO COME BACK
12:55PM 13 TO THIS LATER SO WE DON'T WASTE TIME WITH IT.

12:55PM 14 THE COURT: SURE.

12:55PM 15 MR. COOPERSMITH: THANK YOU. SORRY ABOUT THAT.

12:56PM 16 (PAUSE IN PROCEEDINGS.)

12:56PM 17 BY MR. COOPERSMITH:

12:56PM 18 Q. SO WE WERE TALKING ABOUT DR. ROSENDORFF; RIGHT?

12:56PM 19 YOU THOUGHT HIGHLY OF DR. ROSENDORFF?

12:56PM 20 A. YES.

12:56PM 21 Q. AND DID YOU UNDERSTAND THAT WHEN IT CAME TIME TO RELEASE
12:56PM 22 RESULTS TO A PATIENT, THE ULTIMATE AUTHORITY IN THE LABORATORY
12:56PM 23 WOULD BE DR. ROSENDORFF?

12:56PM 24 A. YES.

12:56PM 25 Q. AND MAYBE DR. PANDORI AS WELL?

12:56PM 1 A. AT THAT POINT I THINK IT WAS DR. ROSENDORFF.

12:56PM 2 Q. OKAY. WHILE YOU WERE WORKING IN THE CLIA LAB --

12:56PM 3 A. YES.

12:56PM 4 Q. -- AND WAS IT EVER YOUR JOB TO RELEASE PATIENT RESULTS?

12:56PM 5 A. NO. I WOULD FORWARD THEM TO A CLINICAL LAB SCIENTIST.

12:57PM 6 Q. OKAY. SO THERE WAS A TITLE OR, YOU KNOW, A JOB POSITION

12:57PM 7 AT THERANOS CALLED CLINICAL LAB SCIENTIST; IS THAT RIGHT?

12:57PM 8 A. THAT IS CORRECT.

12:57PM 9 Q. OKAY. DO YOU UNDERSTAND THAT A CLINICAL LABORATORY

12:57PM 10 SCIENTIST, THERE ARE CERTAIN REQUIREMENTS TO BE ABLE TO WORK IN

12:57PM 11 THAT POSITION?

12:57PM 12 A. YES.

12:57PM 13 Q. AND DID YOU HAVE ANY OF THOSE QUALIFICATIONS?

12:57PM 14 A. NO.

12:57PM 15 Q. AND THE REQUIREMENTS, DO YOU UNDERSTAND, INCLUDE NOT ONLY

12:57PM 16 A BACHELOR'S DEGREE BUT ALSO A TRAINING, INTERNSHIP PROGRAM FOR

12:57PM 17 ABOUT A YEAR?

12:57PM 18 A. YES.

12:57PM 19 Q. AND THEN ALSO PRACTICAL LABORATORY TRAINING IN SPECIALTY

12:57PM 20 AREAS.

12:57PM 21 DO YOU UNDERSTAND THAT?

12:57PM 22 A. YES.

12:57PM 23 Q. AND DO YOU UNDERSTAND THAT AFTER TRAINING, THE CANDIDATE

12:57PM 24 FOR CLINICAL LAB SCIENTIST CERTIFICATION HAS TO TAKE A

12:57PM 25 COMPREHENSIVE WRITTEN EXAM?

12:57PM 1 A. YES.

12:57PM 2 Q. AND YOU NEVER TOOK THAT EXAM, DID YOU?

12:57PM 3 A. NO.

12:57PM 4 Q. AND THE CERTIFIED -- OR, I'M SORRY, THE CLINICAL LAB

12:58PM 5 SCIENTIST, HAVE YOU EVER HEARD IT REFERRED TO AS THE CLS?

12:58PM 6 A. YES.

12:58PM 7 Q. AND THERE WERE PEOPLE IN THE LAB -- WHEN YOU WORKED AT

12:58PM 8 THERANOS, YOU WERE THE CLS, THE CLINICAL LAB SCIENTIST; RIGHT?

12:58PM 9 A. YES.

12:58PM 10 Q. AND WOULD THOSE PEOPLE BE PERMITTED TO RELEASE PATIENT

12:58PM 11 RESULTS UNDER THE SUPERVISION OF THE LAB DIRECTOR?

12:58PM 12 A. YES.

12:58PM 13 Q. AND SO IF YOU WANTED A PATIENT RESULT RELEASED AFTER YOU

12:58PM 14 RAN ONE OF YOUR TESTS, YOU WOULD -- YOU COULDN'T DO THAT

12:58PM 15 YOURSELF, YOU WOULD HAVE TO GET THE CLS, OR SOMEONE ABOVE THAT,

12:58PM 16 TO RELEASE THE PATIENT RESULT; RIGHT?

12:58PM 17 A. THAT IS CORRECT.

12:58PM 18 Q. LET'S GO BACK TO THE CONCEPT OF RESEARCH AND DEVELOPMENT

12:59PM 19 VERSUS CLIA FOR A MINUTE.

12:59PM 20 SO DO YOU UNDERSTAND THAT RESEARCH AND DEVELOPMENT IS

12:59PM 21 DESIGNED FOR THE PURPOSE OF CREATING NEW TECHNOLOGY OR

12:59PM 22 IMPROVING EXISTING TECHNOLOGY; IS THAT FAIR?

12:59PM 23 A. THAT'S CORRECT.

12:59PM 24 Q. AND THERE'S NOTHING WRONG WITH THAT?

12:59PM 25 A. NO.

12:59PM 1 Q. AND EVEN IF THE COMPANY IS RUNNING PARTICULAR BLOOD TESTS,
12:59PM 2 THERE'S NOTHING WRONG WITH THEM CONTINUING TO WORK ON
12:59PM 3 INNOVATION IN THE R&D LAB AT THE SAME TIME, IS THERE?
12:59PM 4 A. THAT'S CORRECT.
12:59PM 5 Q. AND A LOT OF COMPANIES DO THAT. DO YOU KNOW THAT?
12:59PM 6 A. YES.
12:59PM 7 Q. AND SO, FOR EXAMPLE, IF APPLE INVENTS AN IPHONE 11, THEY
12:59PM 8 CAN STILL BE WORKING ON THE IPHONE 12 EVEN THOUGH THEY'RE
12:59PM 9 SELLING THE 11; RIGHT?
12:59PM 10 A. YES.
12:59PM 11 Q. OKAY. LET'S TALK ABOUT WHEN YOU STARTED WORKING IN THE
12:59PM 12 CLIA LAB. AND I THINK YOU MENTIONED THERE CAME A TIME THAT
01:00PM 13 DR. PANDORI GAVE YOU ASSIGNMENTS AS FAR AS WHAT YOUR
01:00PM 14 RESPONSIBILITIES WOULD BE IN THE CLIA LAB; IS THAT RIGHT?
01:00PM 15 A. THAT'S CORRECT.
01:00PM 16 Q. AND COULD YOU TAKE A LOOK IN YOUR BINDER AT EXHIBIT 1557.
01:00PM 17 A. OKAY. I'M HERE.
01:00PM 18 Q. OKAY. THANKS.
01:00PM 19 DO YOU RECOGNIZE THIS AS AN EMAIL FROM DR. PANDORI TO
01:00PM 20 YOURSELF DATED FEBRUARY 2ND, 2014, WITH THE SUBJECT IS TASK
01:00PM 21 ASSIGNMENTS?
01:00PM 22 A. YES.
01:00PM 23 Q. AND DO YOU REMEMBER RECEIVING THIS EMAIL?
01:00PM 24 A. YES.
01:00PM 25 Q. AND THEN ON THE SECOND PAGE IT HAS TASKS ONE THROUGH FIVE.

01:01PM 1 DO YOU SEE THAT?

01:01PM 2 A. YES.

01:01PM 3 MR. COOPERSMITH: YOUR HONOR, WE OFFER EXHIBIT 1557.

01:01PM 4 MR. BOSTIC: NO OBJECTION.

01:01PM 5 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:01PM 6 (DEFENDANT'S EXHIBIT 1557 WAS RECEIVED IN EVIDENCE.)

01:01PM 7 BY MR. COOPERSMITH:

01:01PM 8 Q. OKAY. IT STARTS OUT -- LET'S START WITH DR. PANDORI.

01:01PM 9 DO YOU KNOW WHAT DR. PANDORI'S BACKGROUND WAS?

01:01PM 10 A. DR. PANDORI WAS ALSO A PH.D., AND HE HAD WORKED ON HIV
01:01PM 11 DIAGNOSTICS, AND HE HAD A SPECIAL CERTIFICATION THAT ALLOWED
01:01PM 12 HIM TO ESSENTIALLY WORK IN BIGGER CAPACITY FOR MICROBIOLOGY
01:01PM 13 SAMPLES, AND HE HAD WORKED MOSTLY FOR STATE LABS.

01:01PM 14 Q. OKAY. SO IT SOUNDS LIKE HE WAS A PH.D., BUT
01:01PM 15 DR. ROSENDORFF WAS A MEDICAL DOCTOR?

01:01PM 16 A. YES.

01:01PM 17 Q. OKAY. SO LET'S GO BACK TO THE TASK ASSIGNMENTS. SO IT
01:01PM 18 STARTS OUT BY SAYING, "ERIKA,

01:01PM 19 "ATTACHED IS A LISTING OF TASKS FOR WHICH YOU WILL BE
01:01PM 20 RESPONSIBLE IN CLIA LAB. PLEASE DO NOT HESITATE TO DISCUSS IF
01:01PM 21 YOU HAVE ANY QUESTIONS."

01:02PM 22 DO YOU SEE THAT?

01:02PM 23 A. YES.

01:02PM 24 Q. AND WAS DR. PANDORI YOUR BOSS IN THE CLIA LAB?

01:02PM 25 A. YES.

01:02PM 1 Q. AND WAS HE YOUR DIRECT SUPERVISOR OR WERE THERE PEOPLE IN
01:02PM 2 BETWEEN YOU AND DR. PANDORI?

01:02PM 3 A. UM, HE WAS MOSTLY MY DIRECT SUPERVISOR, BUT IN TERMS OF
01:02PM 4 THE PATIENT PROCESSING, I WOULD INTERFACE WITH STELLA HOWARD AS
01:02PM 5 WELL WHO IS A CLS.

01:02PM 6 Q. SHE WAS A CERTIFIED CLINICAL LAB SCIENTIST?

01:02PM 7 A. THAT'S CORRECT.

01:02PM 8 Q. AND, IN FACT, IF YOU JUST SKIP TO THE SECOND PAGE REAL
01:02PM 9 QUICKLY, THERE'S A REFERENCE IN NUMBER 2 THERE TO SOMEONE NAMED
01:02PM 10 STELLA.

01:02PM 11 DO YOU SEE THAT?

01:02PM 12 A. YES.

01:02PM 13 Q. AND DO YOU UNDERSTAND THAT THAT'S THAT SAME PERSON,
01:02PM 14 STELLA HOWARD?

01:02PM 15 A. YES.

01:02PM 16 Q. AND LET'S STAY ON THAT ONE MORE A MINUTE.

01:02PM 17 THAT PARTICULAR TASK IS THAT "DAILY: PERFORM LABORATORY
01:02PM 18 TESTING, AS DIRECTED BY THE SCHEDULE. REPORT TO STELLA WITH
01:02PM 19 RESULTS SO THAT SHE CAN REVIEW AND RELEASE THEM. ON WEEKENDS,
01:02PM 20 PLEASE DO THIS WITH THE SCHEDULED CLA OR CLS SUPERVISOR, AS
01:02PM 21 AVAILABLE."

01:02PM 22 DO YOU SEE THAT?

01:02PM 23 A. YES.

01:02PM 24 Q. SORRY. SO IS THAT THE SAME CONCEPT THAT WE WERE
01:03PM 25 DISCUSSING A MINUTE AGO WHERE IF A PATIENT RESULT WAS GOING TO

01:03PM 1 BE RELEASED OR NOT, THAT WOULDN'T BE YOUR POSITION, THAT WOULD

01:03PM 2 BE SOMEONE IN THE POSITION OF STELLA HOWARD OR ANOTHER CLINICAL

01:03PM 3 LAB SCIENTIST?

01:03PM 4 A. THAT IS CORRECT.

01:03PM 5 Q. OKAY. AND, NOW, IF YOU GO BACK TO THE FIRST PAGE.

01:03PM 6 DR. PANDORI WROTE IN THE SECOND PARAGRAPH, "KEY AMONGST

01:03PM 7 THEM," MEANING THE TASKS, "IS ASSESSMENT OF THE CURRENT SOP FOR

01:03PM 8 EDISON TESTING."

01:03PM 9 AND HE GOES ON TO SAY, "WE WANT TO MAKE CERTAIN THAT THE

01:03PM 10 SOP ON FILE ARE ACCURATE WITH REGARD TO HOW THE TESTING IS

01:03PM 11 ACTUALLY PERFORMED FOR PATIENTS. PLEASE LET ME KNOW IF YOU

01:03PM 12 REQUIRE ACCESS TO THE CURRENT SOP ON FILE, AND IF YOU HAVE ANY

01:03PM 13 QUESTIONS WITH REGARD TO HOW TO EDIT THEM."

01:03PM 14 DO YOU SEE THAT?

01:03PM 15 A. YES.

01:03PM 16 Q. AND WAS YOUR UNDERSTANDING OF THAT WAS THAT SOMETIMES WHEN

01:03PM 17 THERE IS A STANDARD OPERATING PROCEDURE -- WELL, LET ME BACK

01:03PM 18 UP.

01:03PM 19 DO YOU UNDERSTAND THE STANDARD OPERATING PROCEDURE IS LIKE

01:03PM 20 A SET OF RULES THAT GOVERN HOW THE CLINICAL LAB STAFF IS

01:04PM 21 SUPPOSED TO GO ABOUT CONDUCTING A TEST?

01:04PM 22 A. YES.

01:04PM 23 Q. OR ANY OTHER ACTIVITY?

01:04PM 24 A. YES.

01:04PM 25 Q. OKAY. AND IS IT ALSO THE CASE, YOU UNDERSTAND, THAT

01:04PM 1 SOMETIMES WHEN PEOPLE ARE WORKING IN THE LAB, THEY MAY COME UP
01:04PM 2 WITH A SLIGHTLY DIFFERENT PROCESS OF SOMETHING THAT IS MORE
01:04PM 3 EFFICIENT OR SOMETHING THAT MIGHT WORK A LITTLE BETTER OR
01:04PM 4 THINGS LIKE THAT?

01:04PM 5 IS THAT FAIR?

01:04PM 6 A. YES.

01:04PM 7 Q. AND THEN THERE WOULD BE A NEED AT THAT POINT TO EDIT THE
01:04PM 8 SOP TO CONFORM WITH WHAT THE PRACTICE HAS NOW BECOME; RIGHT?

01:04PM 9 A. THAT IS CORRECT.

01:04PM 10 Q. AND THAT'S WHAT DR. PANDORI WAS ASKING YOU TO DO, AT LEAST
01:04PM 11 IN THAT PARTICULAR TASK?

01:04PM 12 A. YES.

01:04PM 13 Q. OKAY. AND YOU WOULD AGREE WITH ME THAT STANDARD OPERATING
01:04PM 14 PROCEDURES ARE VERY IMPORTANT IN A CLINICAL LAB?

01:04PM 15 A. YES.

01:04PM 16 Q. AND THE REASON IS TO MAKE SURE IN AS MUCH AS POSSIBLE THAT
01:04PM 17 THE LAB IS ENGAGING IN A CONSISTENT PRACTICE?

01:04PM 18 A. YES.

01:04PM 19 Q. AND BECAUSE YOU JUST CAN'T HAVE PEOPLE DOING WHATEVER THEY
01:04PM 20 WANT ANY TIME THEY WANT; RIGHT?

01:04PM 21 A. EXACTLY.

01:04PM 22 Q. AND RESEARCH AND DEVELOPMENT MIGHT BE A LITTLE DIFFERENT?

01:04PM 23 A. UM, YEAH.

01:04PM 24 Q. OKAY. AND THERE'S NOTHING WRONG, IS THERE, WITH
01:05PM 25 MANAGEMENT OF A COMPANY OR A LAB DIRECTOR OR ANYONE ELSE

01:05PM 1 WANTING STANDARD OPERATING PROCEDURES TO BE FOLLOWED, IS THERE?

01:05PM 2 A. COULD YOU REPEAT THAT QUESTION.

01:05PM 3 Q. SURE. THERE'S NOTHING WRONG WITH COMPANY MANAGEMENT TO

01:05PM 4 WANT STANDARD OPERATING PROCEDURES TO BE FOLLOWED?

01:05PM 5 A. NO.

01:05PM 6 Q. SO IF YOU COULD, MS. CHEUNG -- ACTUALLY, BEFORE WE GO AWAY

01:05PM 7 FROM THIS EXHIBIT, YEAH, LET'S GO TO THE SECOND PAGE OF THIS

01:05PM 8 EXHIBIT JUST TO FINISH THIS ONE UP.

01:05PM 9 SO THE FIRST TASK IT SAYS, "DAILY: MAINTAIN GENERAL

01:05PM 10 ORDERLINESS AND NEATNESS IN THE EDISON TEST PROCESSING AREAS.

01:05PM 11 DESIGNATE CLIA AREAS AND PIPETTES FROM RESEARCH AREAS AND

01:05PM 12 PIPETTES."

01:05PM 13 DO YOU SEE THAT?

01:05PM 14 A. YES.

01:05PM 15 Q. AND THE FIRST REASON WAS TO MAKE SURE THERE WAS

01:06PM 16 ORDERLINESS IN THE LAB?

01:06PM 17 A. YES.

01:06PM 18 Q. AND THAT SEEMED LIKE A GOOD IDEA; RIGHT?

01:06PM 19 A. YES.

01:06PM 20 Q. AND THEN ALSO AS PART OF THIS TASK TO MAKE SURE THAT THERE

01:06PM 21 WAS DELINEATION OR -- BETWEEN THE CLIA PART OF THE LAB AND THE

01:06PM 22 RESEARCH AND DEVELOPMENT PART OF THE LAB?

01:06PM 23 A. YES.

01:06PM 24 Q. BECAUSE IN THERANOS, IN NORMANDY SOMETIMES THERE WERE

01:06PM 25 RESEARCH AND DEVELOPMENT EXPERIMENTS GOING ON AND ALSO CLIA

01:06PM 1 WORK AS WELL; RIGHT?

01:06PM 2 A. YEAH, WE SHARED THE SAME DEVICES.

01:06PM 3 Q. RIGHT. SOMETIMES A DEVICE WOULD BE USED TO RUN A RESEARCH
01:06PM 4 AND DEVELOPMENT EXPERIMENT AND SOMETIMES A DEVICE WOULD BE USED
01:06PM 5 TO RUN A CLINICAL PATIENT SAMPLE?

01:06PM 6 A. THAT IS CORRECT.

01:06PM 7 Q. AND WHEN THE DEVICE WAS BEING USED ON THE RESEARCH AND
01:06PM 8 DEVELOPMENT SIDE, WHATEVER RESULT CAME OF THOSE TESTS, THAT
01:06PM 9 WOULD NOT GO TO PATIENTS FOR ANY KIND OF DIAGNOSTIC PURPOSE?

01:06PM 10 A. THAT IS CORRECT.

01:06PM 11 Q. OKAY. AND THEN WE'VE LOOKED AT NUMBER 2 ALREADY ON THIS
01:07PM 12 SHEET.

01:07PM 13 NUMBER 3 IT SAYS, "DAILY: THE TASK HERE IS TO MAINTAIN
01:07PM 14 TEMPERATURE LOGS FOR DOWNSTAIRS NORMANDY REFRIGERATORS AND
01:07PM 15 FREEZERS RELEVANT TO CLIA PATIENT SAMPLES AND REAGENTS.
01:07PM 16 BYRON BAILEY WILL TRAIN THIS."

01:07PM 17 DO YOU SEE THAT?

01:07PM 18 A. YES.

01:07PM 19 Q. DO YOU REMEMBER BYRON BAILEY?

01:07PM 20 A. YEAH. HE WAS ALSO A LAB ASSOCIATE.

01:07PM 21 Q. AND SO AT THE SAME LEVEL AT YOU?

01:07PM 22 A. YES.

01:07PM 23 Q. BUT SOMEONE WHO HAD PREVIOUSLY BEEN WORKING IN THIS
01:07PM 24 PARTICULAR TASK AREA OF MAKING SURE THAT SAMPLES WERE PROPERLY
01:07PM 25 REFRIGERATED?

01:07PM 1 A. YES.

01:07PM 2 Q. AND THEN NUMBER 4, "AS NEEDED (OR MONTHLY): VERIFY THAT

01:07PM 3 SOP FOR EDISON TESTS ARE ACCURATE FOR HOW THEY ARE CURRENTLY

01:07PM 4 ACTUALLY PERFORMED."

01:07PM 5 DO YOU SEE THAT?

01:07PM 6 A. YES.

01:07PM 7 Q. OKAY.

01:07PM 8 AND THEN NUMBER 5, JUST TO ROUND IT OUT, IT SAYS,

01:07PM 9 "CONTINUOUS: ASSIST IN ANY ONGOING VALIDATIONS, CALIBRATIONS,

01:08PM 10 OR QC OPERATIONS AS NECESSARY."

01:08PM 11 RIGHT?

01:08PM 12 SO THIS WAS JUST THE WORK OF THE LAB, AND YOU WOULD BE

01:08PM 13 TASKED AS NEEDED WHEN THINGS CAME UP; RIGHT?

01:08PM 14 A. EXACTLY.

01:08PM 15 Q. OKAY. AND THEN ON QC OPERATIONS, I THINK YOU SAID WHEN

01:08PM 16 MR. BOSTIC WAS QUESTIONING YOU THAT QC WAS A DAILY ACTIVITY?

01:08PM 17 A. YES.

01:08PM 18 Q. SO EVERY DAY, EVERY MACHINE THAT WAS RUNNING SAMPLES HAD

01:08PM 19 TO BE SUBJECTED TO A QUALITY CONTROL PROCEDURE?

01:08PM 20 A. THAT IS CORRECT.

01:08PM 21 Q. AND THE RULE WAS THAT IF IT DIDN'T PASS THE QUALITY

01:08PM 22 CONTROL, THEN IT COULD NOT BE USED FOR PATIENT TESTING?

01:08PM 23 A. THAT IS CORRECT.

01:08PM 24 Q. OKAY. LET'S GO TO THAT EXHIBIT 9925. IT SHOULD ALSO BE

01:08PM 25 IN YOUR FIRST BINDER.

01:09PM 1 OKAY. ARE YOU THERE?

01:09PM 2 A. YES.

01:09PM 3 Q. THANK YOU.

01:09PM 4 SO YOU SEE THAT EXHIBIT 9925 IS TITLED AT THE TOP THERANOS
01:09PM 5 STANDARD OPERATING PROCEDURE AND THEN BELOW THAT IT SAYS CLIA
01:09PM 6 LABORATORY?

01:09PM 7 A. YES.

01:09PM 8 Q. AND THEN BELOW THAT IT HAS A HEADING INDICATING WHAT IT IS
01:09PM 9 FOR.

01:09PM 10 DO YOU SEE THAT?

01:09PM 11 A. YES.

01:09PM 12 Q. AND DO YOU RECOGNIZE THIS AS A STANDARD OPERATING
01:09PM 13 PROCEDURE THAT WAS BEING USED IN THE CLIA LAB WHEN YOU WERE
01:09PM 14 WORKING THERE?

01:09PM 15 A. THAT IS CORRECT.

01:09PM 16 MR. COOPERSMITH: YOUR HONOR, WE OFFER 9925.

01:09PM 17 MR. BOSTIC: I'M SORRY. CAN WE JUST CLARIFY THAT
01:09PM 18 THE WITNESS HAS SEEN THIS DOCUMENT?

01:09PM 19 THE COURT: DO YOU WANT TO JUST ASK THAT QUESTION.
01:09PM 20 BY MR. COOPERSMITH:

01:09PM 21 Q. HAVE YOU SEEN IT?

01:09PM 22 A. YES.

01:09PM 23 MR. BOSTIC: NO OBJECTION, YOUR HONOR.

01:09PM 24 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:09PM 25 (DEFENDANT'S EXHIBIT 9925 WAS RECEIVED IN EVIDENCE.)

01:10PM 1 BY MR. COOPERSMITH:

01:10PM 2 Q. OKAY. SO LET'S GO TO THE FIRST PAGE.

01:10PM 3 AND DO YOU SEE THERE AT THE TOP IT SAYS, "TOTAL 25-OH

01:10PM 4 VITAMIN D ON EDISON 3.5 THERANOS SYSTEM."

01:10PM 5 A. YES.

01:10PM 6 Q. AND THAT'S WHAT THIS IS FOR, RIGHT, IT'S A STANDARD

01:10PM 7 OPERATING PROCEDURE FOR ACTUALLY RUNNING VITAMIN D TESTS?

01:10PM 8 A. YES.

01:10PM 9 Q. OKAY. ON THE EDISON 3.5 SYSTEM?

01:10PM 10 A. YES.

01:10PM 11 Q. AND THEN THERE'S A BUNCH OF SIGNATURES BELOW THAT.

01:10PM 12 AND DO YOU SEE THE FIRST ONE IS MICHELLE JOHNSON, AND IT

01:10PM 13 LOOKS LIKE HER SIGNATURE IS NOVEMBER 27TH, 2013.

01:10PM 14 DO YOU SEE THAT?

01:10PM 15 A. YES.

01:10PM 16 Q. AND DO YOU KNOW WHO MICHELLE JOHNSON WAS?

01:10PM 17 A. SHE WAS A RESEARCH ASSOCIATE UNDER THE ELISA TEAM.

01:10PM 18 Q. OKAY. SO THAT WAS THE SAME TEAM THAT YOU WERE WORKING IN

01:10PM 19 WHEN YOU WERE A RESEARCH ASSOCIATE?

01:10PM 20 A. YES.

01:10PM 21 Q. AND THEN BELOW THAT THERE'S THE SIGNATURE OF

01:10PM 22 SURAJ SAKSENA -- IT SAYS SAKENA, BUT I THINK HIS NAME MIGHT BE

01:11PM 23 SAKSENA; IS THAT RIGHT?

01:11PM 24 A. SAKSENA.

01:11PM 25 Q. SAKSENA. OKAY.

01:11PM 1 AND I THINK YOU DISCUSSED DR. SAKSENA ON DIRECT, BUT JUST

01:11PM 2 REMIND US WHO WAS HE?

01:11PM 3 A. HE WAS A SCIENTIST UNDERNEATH THE BINDERS TEAM, BUT HE

01:11PM 4 ALSO WORKED FOR ELISA WHEN THERE WAS A KIND OF PUSH TO MOVE

01:11PM 5 PEOPLE FROM BINDERS TO ELISA, AND THEN HE ALSO WORKED IN

01:11PM 6 PRODUCTION.

01:11PM 7 Q. OKAY. SO HE HAD SEVERAL ROLES IT SOUNDS LIKE?

01:11PM 8 A. YES.

01:11PM 9 Q. AND WHAT IS THE BINDERS TEAM?

01:11PM 10 A. BINDERS IS ESSENTIALLY TO CREATE THE ANTIBODIES NECESSARY

01:11PM 11 TO RUN THE ELISA ASSAYS. SO IT'S ESSENTIALLY THE INITIAL

01:11PM 12 REAGENT THAT YOU NEED IN ORDER TO DEVELOP THAT TYPE OF ASSAY.

01:11PM 13 Q. OKAY. SO IT SOUNDS LIKE THERE WERE QUITE A FEW STEPS IN

01:11PM 14 THE PROCESS TO DEVELOP AN ASSAY?

01:11PM 15 A. YES.

01:11PM 16 Q. AND DIFFERENT PARTS OF THE COMPANY HAVE TO WORK TOGETHER

01:11PM 17 TO ACCOMPLISH THAT?

01:11PM 18 A. THAT IS CORRECT.

01:11PM 19 Q. OKAY. WE'LL COME BACK TO THAT.

01:11PM 20 SO BELOW DR. SAKSENA AFTER HIS SIGNATURE DO YOU SEE

01:11PM 21 THERE'S A SIGNATURE OF DR. DANIEL YOUNG?

01:12PM 22 A. YES.

01:12PM 23 Q. AND I JUST WANT TO TALK ABOUT DR. YOUNG FOR A MINUTE.

01:12PM 24 IT ALSO HAS A PH.D. NEXT TO HIS NAME.

01:12PM 25 DO YOU RECOGNIZE WHAT DR. YOUNG'S BACKGROUND WAS?

01:12PM 1 A. HE KNEW HE HAD A PH.D. FROM M.I.T., BUT I WASN'T -- I
01:12PM 2 CAN'T BE POSITIVE OF WHAT IT IS. I THINK IT WAS IN BIOMEDICAL
01:12PM 3 ENGINEERING.

01:12PM 4 Q. OKAY. AND DID YOU UNDERSTAND THAT DR. YOUNG -- AND JUST
01:12PM 5 TO -- I'M NOT SURE. HE HAD A PH.D. FROM THE MASSACHUSETTS
01:12PM 6 INSTITUTE OF TECHNOLOGY?

01:12PM 7 A. YES.

01:12PM 8 Q. AND M.I.T.?

01:12PM 9 A. YES.

01:12PM 10 Q. IN BOSTON?

01:12PM 11 A. YES.

01:12PM 12 Q. AND DID YOU -- YOU UNDERSTOOD THAT HE HAD A PARTICULAR
01:12PM 13 EXPERTISE IN THE FIELD OF BIO STATISTICS?

01:12PM 14 A. NO. I CAN'T RECALL.

01:12PM 15 Q. AND DO YOU RECALL HIS TITLE WAS SENIOR DIRECTOR,
01:12PM 16 COMPUTATIONAL BIOSCIENCES?

01:12PM 17 A. NO, I DON'T REMEMBER THAT.

01:12PM 18 Q. OKAY. CAN YOU TAKE A LOOK AT EXHIBIT 10229, WHICH IS IN
01:13PM 19 YOUR SECOND BINDER. ACTUALLY, IT'S IN YOUR FIRST BINDER.

01:13PM 20 AND DO YOU SEE -- DO YOU RECOGNIZE THAT AS THE RESUME OF
01:13PM 21 DR. YOUNG?

01:13PM 22 A. YES.

01:13PM 23 Q. AND YOU UNDERSTOOD THE COMPANY MAINTAINED THESE RESUMES ON
01:13PM 24 FILE WHEN PEOPLE WORKED WITH THE COMPANY?

01:13PM 25 A. I DIDN'T KNOW THAT.

01:13PM 1 Q. YOU DIDN'T KNOW THAT? OKAY.

01:13PM 2 DO YOU SEE DR. YOUNG'S QUALIFICATIONS LISTED IN THE
01:13PM 3 RESUME?

01:13PM 4 A. YES.

01:13PM 5 Q. AND DO YOU SEE AT THE TOP IT SAYS THAT HE HAD A PH.D. FROM
01:13PM 6 M.I.T.?

01:13PM 7 A. YES.

01:13PM 8 Q. AND THEN IF YOU LOOK AT HE HAS A PRIOR PROFESSIONAL
01:13PM 9 BACKGROUND?

01:13PM 10 MR. BOSTIC: OBJECTION. YOUR HONOR, I WOULD ASK
01:13PM 11 THAT THE EXHIBIT BE ADMITTED BEFORE WE READ ITS CONTENTS.

01:14PM 12 MR. COOPERSMITH: OKAY. I CAN OFFER THE EXHIBIT.
01:14PM 13 IT'S EXHIBIT 10229.

01:14PM 14 MR. BOSTIC: YOUR HONOR, OBJECTION. AUTHENTICATION,
01:14PM 15 FOUNDATION, AND HEARSAY.

01:14PM 16 THE COURT: SUSTAINED WITHOUT MORE.

01:14PM 17 MR. COOPERSMITH: OKAY. WE'LL MOVE ON, YOUR HONOR.
01:14PM 18 I'LL USE THIS WITH ANOTHER WITNESS.

01:14PM 19 THE COURT: OKAY.

01:14PM 20 BY MR. COOPERSMITH:

01:14PM 21 Q. LET'S CONTINUE WITH EXHIBIT 9925. THIS IS THE STANDARD
01:14PM 22 OPERATING PROCEDURE FOR VITAMIN D TESTING.

01:14PM 23 OKAY. AND IF YOU CAN TURN TO -- THERE ARE PAGE NUMBERS IN
01:14PM 24 A LITTLE BOX, NOT AT THE VERY BOTTOM, BUT I'M LOOKING AT PAGE 6
01:14PM 25 OF 21.

01:14PM 1 CAN YOU FIND THAT?

01:14PM 2 A. YES.

01:15PM 3 Q. OKAY. AND DO YOU SEE THERE'S A PARAGRAPH 8 THAT IS TITLED
01:15PM 4 THERANOS SYSTEM?

01:15PM 5 A. YES.

01:15PM 6 Q. OKAY. AND IT READS, "THE THERANOS DEVICES AND SYSTEMS
01:15PM 7 CONSIST OF READER AND MULTIPLE SINGLE-USE CARTRIDGES THAT
01:15PM 8 CONTAIN ALL OF THE REQUIRED REAGENTS FOR PERFORMING THE ASSAY
01:15PM 9 ON THAT CARTRIDGE. THE SYSTEM CAN BE OPERATED WITH MINIMAL
01:15PM 10 TRAINING AND PERFORMS MULTIPLE TESTS ON A VARIETY OF SAMPLE
01:15PM 11 TYPES, SUCH AS WHOLE BLOOD, SERUM, PLASMA, URINE, FECES, OR
01:15PM 12 RESPIRATORY SAMPLES. THE SYSTEM ENABLES RESULTS IN UNDER AN
01:15PM 13 HOUR WITH PRECISION AND ACCURACY EQUIVALENT TO TRADITIONAL
01:15PM 14 CLINICAL LABORATORY ANALYZERS. THE DEVICE CONSISTS OF A TOUCH
01:15PM 15 DISPLAY FOR USER INTERFACE, PROCESSOR AND COMMUNICATION
01:15PM 16 SYSTEMS, AND SAMPLE PROCESSING MODULES."

01:15PM 17 DO YOU SEE THAT?

01:15PM 18 A. YES.

01:15PM 19 Q. AND THIS WAS IN A DOCUMENT THAT DR. ROSENDORFF, DR. YOUNG,
01:15PM 20 AND DR. SAKSENA ALL SIGNED?

01:16PM 21 A. YES.

01:16PM 22 Q. IF YOU GO TO THE NEXT PAGE, WHICH IS PAGE 7 OF 21, DO YOU
01:16PM 23 SEE THERE'S A SECTION 8.1.2 "QUALITY TESTED DAILY IN ACCORDANCE
01:16PM 24 TO (EDISON 3.5 DAILY QC DOC.)"

01:16PM 25 DO YOU SEE THAT?

01:16PM 1

A. YES.

01:16PM 2

Q. AND IS THAT THE DAILY QC TESTING WE WERE TALKING ABOUT
EARLIER?

01:16PM 3

01:16PM 4

A. YES, BEFORE YOU RUN A PATIENT SAMPLE.

01:16PM 5

Q. OKAY. AND THEN THE NEXT SECTION IS 8.2 AND THAT READS,
"EDISON 3.5 CARTRIDGE."

01:16PM 6

01:16PM 7

AND THEN THAT SAYS, "EDISON CARTRIDGES ARE VALIDATED AND
QUALITY TESTED IN ACCORDANCE TO SOP-00089, CARTRIDGE 060
ACCEPTANCE CRITERIA."

01:16PM 8

01:16PM 9

01:16PM 10

DO YOU SEE THAT?

01:17PM 11

A. YES.

01:17PM 12

Q. AND SO THERE WAS A SEPARATE QUALITY TESTING PROGRAM FOR
THE CARTRIDGES THEMSELVES?

01:17PM 13

01:17PM 14

A. YES.

01:17PM 15

Q. AND THAT'S SEPARATE FROM THE QUALITY TESTING PROGRAM FOR
THE DAILY QUALITY TESTING ON THE EDISON DEVICE?

01:17PM 16

01:17PM 17

A. YES.

01:17PM 18

Q. OKAY. AND JUST SO WE'RE ALL ON THE SAME PAGE, THE
CARTRIDGE, THAT WAS THE THING THAT YOU PUT THE BLOOD SAMPLE
INTO AT THERANOS?

01:17PM 20

01:17PM 21

A. THAT IS CORRECT.

01:17PM 22

Q. AND THE CARTRIDGE ALSO CONTAINED WHAT ARE CALLED REAGENTS
AND THINGS LIKE THAT TO INTERACT WITH THE BLOOD SAMPLE TO
EVENTUALLY CONDUCT THE TEST; RIGHT?

01:17PM 23

01:17PM 24

01:17PM 25

A. THAT IS CORRECT.

01:17PM 1 Q. OKAY. AND THAT CARTRIDGE, WHEN WE SAY REAGENTS, WE'RE
01:17PM 2 TALKING ABOUT PARTICULAR CHEMICALS THAT ARE DESIGNED TO CREATE,
01:17PM 3 YOU KNOW, CERTAIN RESULTS FOR -- IN BLOOD TESTING; RIGHT?

01:17PM 4 A. THAT IS CORRECT.

01:17PM 5 Q. SO REAGENTS IS ANOTHER WORD FOR CHEMICALS?

01:18PM 6 A. YES.

01:18PM 7 Q. OKAY. AND THEY HAVE TO BE DIFFERENT FOR EACH TEST THAT IS
01:18PM 8 BEING RUN; RIGHT?

01:18PM 9 A. THAT IS CORRECT.

01:18PM 10 Q. AND SO A CARTRIDGE WOULD RESPOND TO A PARTICULAR BLOOD
01:18PM 11 TEST OR TEST THAT THERANOS WANTED TO RUN ON THESE EDISON 3.5
01:18PM 12 DEVICES?

01:18PM 13 A. YES.

01:18PM 14 Q. OKAY. AND DO YOU UNDERSTAND THAT INSIDE OF THE EDISON --
01:18PM 15 DID YOU EVER LOOK INSIDE OF AN EDISON?

01:18PM 16 A. YEAH, WE HAD AN OPEN EDISON THAT DIDN'T HAVE A SHELL.

01:18PM 17 Q. IN ORDER TO TEACH THE STAFF WHAT THE THING WAS ABOUT;
01:18PM 18 RIGHT?

01:18PM 19 A. YES.

01:18PM 20 Q. AND SO AS AN EMPLOYEE OF THE COMPANY YOU COULD SEE THAT;
01:18PM 21 RIGHT?

01:18PM 22 A. YES.

01:18PM 23 Q. AND INSIDE DO YOU RECALL THAT IT HAD ROBOTIC ARMS THAT
01:18PM 24 WOULD MOVE AND BASICALLY TAKE THE CHEMICAL AND HAVE IT MIX WITH
01:18PM 25 THE BLOOD AS NECESSARY TO CONDUCT THE APPROPRIATE TEST THAT WAS

01:18PM 1 BEING RUN; IS THAT RIGHT?

01:18PM 2 A. THAT IS RIGHT.

01:18PM 3 Q. AND THAT'S VERY SIMILAR TO WHAT WOULD HAPPEN, LIKE, SAY ON

01:18PM 4 A LAB BENCH?

01:18PM 5 A. YOU MEAN LIKE HAVING A MANUAL PERSON DO THAT?

01:18PM 6 Q. RIGHT.

01:18PM 7 A. IT'S SIMILAR.

01:19PM 8 Q. RIGHT. BUT THIS TIME IT'S A ROBOTIC ARM DOING IT IN A

01:19PM 9 PROGRAMMED WAY AS OPPOSED TO A HUMAN BEING DOING IT?

01:19PM 10 A. YES.

01:19PM 11 Q. IF YOU GO TO THE NEXT PAGE.

01:19PM 12 IS THAT ACTUALLY A DIAGRAM OF A CARTRIDGE?

01:19PM 13 A. THIS IS A DIAGRAM OF A CARTRIDGE.

01:19PM 14 Q. SO THAT'S THE LAYOUT OF THE CARTRIDGE?

01:19PM 15 A. YES.

01:19PM 16 Q. OKAY. AND THEN WHERE WOULD THE BLOOD SAMPLE BE LOCATED?

01:19PM 17 A. THE BLOOD SAMPLE WOULD BE AT LEAST AT THE BEGINNING OF THE

01:19PM 18 ASSAY WOULD BE IN THE BT SECTION.

01:19PM 19 Q. OKAY. WHERE IT SAYS BT?

01:19PM 20 A. YEAH.

01:19PM 21 Q. AND IF WE CAN ZOOM IN ON THAT.

01:19PM 22 THE COURT: I THINK YOU CAN TOUCH THE SCREEN, AND IT

01:19PM 23 WILL MARK FOR YOU, MS. CHEUNG.

01:19PM 24 THE WITNESS: I'M SORRY?

01:19PM 25 THE COURT: IF YOU TOUCH THE SCREEN.

01:19PM 1 THE WITNESS: OH, IT WILL MARK IT?

01:19PM 2 THE COURT: YES.

01:19PM 3 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

01:20PM 4 Q. SO YOU INDICATED IT'S WHERE IT SAYS BT?

01:20PM 5 A. YES.

01:20PM 6 Q. AND THEN OTHER CIRCLES ON THIS PARTICULAR DIAGRAM WOULD BE

01:20PM 7 THE VARIOUS REAGENTS THAT WE DISCUSSED?

01:20PM 8 A. THAT IS CORRECT.

01:20PM 9 Q. OKAY. AND YOU UNDERSTAND THERANOS INVENTED THIS

01:20PM 10 TECHNOLOGY?

01:20PM 11 A. THE CARTRIDGES?

01:20PM 12 Q. RIGHT.

01:20PM 13 A. YES.

01:20PM 14 Q. AND THE WAY THAT THEY INTERACTED WITH THE EDISON MACHINE,

01:20PM 15 THAT'S ALL WHAT THERANOS -- PART OF WHAT THERANOS INVENTED;

01:20PM 16 RIGHT?

01:20PM 17 A. YES.

01:20PM 18 Q. AND DO YOU UNDERSTAND THAT IN ORDER TO RUN ONE OF THESE

01:20PM 19 CARTRIDGES IN THE EDISON READER, THERE ALSO HAS TO BE SOFTWARE

01:20PM 20 THAT GOVERNS HOW THE MACHINE OPERATES; RIGHT?

01:20PM 21 A. THAT IS CORRECT.

01:20PM 22 Q. OKAY. IF YOU GO TO PAGE 10 OF 21 OF THE SAME EXHIBIT.

01:21PM 23 IF YOU SEE THERE'S A SECTION 12 CALLED QUALITY CONTROL

01:21PM 24 TESTING.

01:21PM 25 DO YOU SEE THAT?

01:21PM 1 A. I SEE THAT.

01:21PM 2 Q. AND 12.1 SAYS, "QUALITY CONTROL TESTING SHOULD BE

01:21PM 3 PERFORMED DAILY AND BEFORE TESTING ANY PATIENT SAMPLES

01:21PM 4 ACCORDING TO," AND IT REFERENCES ANOTHER SOP.

01:21PM 5 DO YOU SEE THAT?

01:21PM 6 A. YES.

01:21PM 7 Q. AND IT SOUNDS LIKE THERE'S A LOT OF SOP'S THAT YOU HAVE TO

01:21PM 8 FOLLOW WHEN YOU'RE IN THE CLIA LAB?

01:21PM 9 A. YES.

01:21PM 10 Q. AND THEN WHEN YOU GO TO THE NEXT ONE, 12.1.1, THE NEXT

01:21PM 11 SECTION, THIS SAYS, "TEST WITH BIORAD IMMUNOASSAY QC MATERIAL

01:21PM 12 LEVELS 1 AND 2 BY FOLLOWING PROCEDURES OUTLINED IN SECTION 13."

01:21PM 13 THE COURT: I THINK WE JUST LOST OUR SCREEN.

01:21PM 14 THE WITNESS: YEAH. OH, THERE IT IS.

01:21PM 15 MR. COOPERSMITH: GREAT.

01:21PM 16 Q. IS IT UP ON YOUR SCREEN?

01:21PM 17 A. IT IS.

01:21PM 18 Q. THANKS. AND DO YOU SEE THAT SECTION THAT IS THE SECOND

01:21PM 19 PART WE HIGHLIGHTED 12.1.1?

01:21PM 20 A. YES.

01:22PM 21 Q. AND THE BIORAD IMMUNOASSAY QC MATERIAL, I JUST WANT TO ASK

01:22PM 22 YOU ABOUT THAT.

01:22PM 23 A. OKAY.

01:22PM 24 Q. YOU UNDERSTAND THAT THAT'S NOT ACTUALLY REAL BLOOD; RIGHT?

01:22PM 25 A. IT DEPENDS ON WHICH ONE YOU BUY, AND IT DEPENDS ON WHAT

01:22PM 1 TYPE OF TEST YOU CONDUCT.

01:22PM 2 SOME OF THEM HAVE SERA AS THE MATRIX IN WHICH THE CONTROL
01:22PM 3 IS MADE, BUT FOR OTHERS IT MIGHT BE SOMETHING ELSE.

01:22PM 4 Q. SO IT MIGHT BE SOMETHING SYNTHETIC? IT'S NOT ACTUALLY
01:22PM 5 HUMAN BLOOD?

01:22PM 6 A. THAT IS CORRECT.

01:22PM 7 Q. AND THE SAME WITH PROFICIENCY TESTING MATERIAL, THAT MIGHT
01:22PM 8 COME FROM THE NEW YORK LABORATORY THAT YOU DESCRIBED BEFORE?

01:22PM 9 A. I CAN'T BE CERTAIN.

01:22PM 10 Q. YOU DON'T KNOW ONE WAY OR THE OTHER?

01:22PM 11 A. IF IT'S REAL BLOOD --

01:22PM 12 Q. RIGHT.

01:22PM 13 A. -- OR IF IT'S SYNTHETIC, I DON'T KNOW FOR ALL OF THE
01:22PM 14 SAMPLES. I DON'T RECALL.

01:22PM 15 Q. OKAY. BUT YOU KNOW AT LEAST SOMETIMES THE QC MATERIAL IS
01:22PM 16 NOT REAL BLOOD, IT'S SOME KIND OF SYNTHETIC MATERIAL?

01:22PM 17 A. RIGHT.

01:22PM 18 Q. AND SO BY DEFINITION IF YOU'RE RUNNING A QC TEST, YOU'RE
01:22PM 19 NOT -- NO PATIENT IS GETTING THAT RESULT; RIGHT?

01:23PM 20 A. THAT IS CORRECT.

01:23PM 21 Q. OKAY.

01:23PM 22 YOUR HONOR, BEFORE I GO TO ANOTHER TOPIC, WOULD THIS BE A
01:23PM 23 GOOD TIME FOR OUR AFTERNOON BREAK?

01:23PM 24 THE COURT: SURE. WE CAN DO THAT.

01:23PM 25 LADIES AND GENTLEMEN, LET'S TAKE OUR 30 MINUTE BREAK FOR

01:23PM 1 THE AFTERNOON.

01:24PM 2 (RECESS FROM 1:24 P.M. UNTIL 1:59 P.M.)

01:59PM 3 THE COURT: PLEASE BE SEATED. THANK YOU. WE'RE

01:59PM 4 BACK ON THE RECORD.

01:59PM 5 OUR JURORS AND ALTERNATES ARE PRESENT.

01:59PM 6 MS. CHEUNG IS ON THE STAND.

01:59PM 7 ALL COUNSEL AND THE DEFENDANT IS PRESENT.

01:59PM 8 MR. COOPERSMITH.

01:59PM 9 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

01:59PM 10 OVER THE BREAK I WAS ABLE TO GET COPIES OF THAT EXHIBIT

01:59PM 11 THAT WE DIDN'T HAVE BEFORE, SO MAY I HAND THOSE UP TO THE COURT

01:59PM 12 AND TO THE WITNESS?

01:59PM 13 THE COURT: YES.

01:59PM 14 MR. COOPERSMITH: THANK YOU.

01:59PM 15 (HANDING.)

02:00PM 16 BY MR. COOPERSMITH:

02:00PM 17 Q. MS. CHEUNG, WELCOME BACK AFTER THE BREAK.

02:00PM 18 DO YOU HAVE IN FRONT OF YOU EXHIBIT 7603DD?

02:00PM 19 A. YES.

02:00PM 20 Q. AND THAT WAS THE ONE YOU DIDN'T HAVE BEFORE?

02:00PM 21 A. YES.

02:00PM 22 Q. OKAY. THANK.

02:00PM 23 SO DO YOU RECOGNIZE THAT AS THE REGULATION THAT GOVERNS

02:00PM 24 THE NEED AND THE DUTY FOR HAVING A LAB DIRECTOR AT A CRITICAL

02:00PM 25 LAB?

02:00PM 1 A. WHICH NUMBER?

02:00PM 2 Q. LET'S JUST START WITH 493.1441.

02:00PM 3 AND IF YOU GO TO 493.1443, LABORATORY QUALIFICATIONS.

02:00PM 4 DO YOU SEE THAT?

02:00PM 5 A. YES.

02:00PM 6 Q. AND IF YOU GO TO THE NEXT REGULATION IT'S 493.1445.

02:00PM 7 DO YOU SEE THAT?

02:00PM 8 A. YES.

02:00PM 9 Q. AND DO YOU RECOGNIZE THOSE REGULATIONS GOVERNING THE JOB

02:01PM 10 OF LABORATORY DIRECTOR AT A CLINICAL LAB?

02:01PM 11 A. YES.

02:01PM 12 MR. COOPERSMITH: YOUR HONOR, WE OFFER 7603DD.

02:01PM 13 MR. BOSTIC: YOUR HONOR, 401 AND 403.

02:01PM 14 THE COURT: YOU KNOW, COUNSEL, I'M NOT CERTAIN THIS

02:01PM 15 SHOULD COME IN. I'M GOING TO SUSTAIN THE OBJECTION.

02:01PM 16 WE CAN TALK ABOUT IT LATER IF YOU WANT TO CONTINUE.

02:01PM 17 MR. COOPERSMITH: OKAY. WE'LL PRESERVE THAT,

02:01PM 18 YOUR HONOR. THANK YOU.

02:01PM 19 Q. MS. CHEUNG, DO YOU UNDERSTAND THAT A LABORATORY DIRECTOR

02:01PM 20 HAS TO BE SOMEONE WITH CERTAIN QUALIFICATIONS?

02:01PM 21 A. YES.

02:01PM 22 Q. AND, FOR EXAMPLE, ONE OF THE QUALIFICATIONS MIGHT BE THAT

02:01PM 23 YOU NEED TO BE A MEDICAL DOCTOR?

02:01PM 24 A. YES.

02:01PM 25 Q. OR A PH.D. WITH CERTAIN OTHER EXPERIENCE?

02:01PM 1 A. YES.

02:01PM 2 Q. LET'S GO BACK TO STANDARD OPERATING PROCEDURES. AND I

02:02PM 3 WANT TO SHOW YOU ANOTHER ONE. IF YOU COULD TURN IN YOUR BINDER

02:02PM 4 TO EXHIBIT 9909.

02:02PM 5 A. I HAVE THAT.

02:02PM 6 Q. DO YOU RECOGNIZE THAT EXHIBIT?

02:02PM 7 A. NO, I'VE NEVER SEEN THIS.

02:02PM 8 Q. YOU'VE NEVER SEEN THIS BEFORE?

02:02PM 9 A. NO.

02:02PM 10 Q. OKAY. DID YOU HAVE AN UNDERSTANDING WHEN YOU WERE WORKING

02:02PM 11 AT THERANOS, AND IN PARTICULAR IN THE CLIA LAB, THAT THERE WAS

02:02PM 12 A PROCEDURE FOR CORRECTIVE AND PREVENTATIVE ACTIONS?

02:02PM 13 A. NOT SPECIFICALLY, NO.

02:02PM 14 Q. OKAY. THERE'S ANOTHER BINDER I THINK YOU HAVE, AND IF

02:02PM 15 NOT, I'LL GIVE IT TO YOU, BUT IT'S A DOCKET -- A BINDER OF SOME

02:03PM 16 PRIOR TESTIMONY.

02:03PM 17 A. UH-HUH.

02:03PM 18 Q. AND YOU'VE TESTIFIED BEFORE IN OTHER PROCEEDINGS ABOUT

02:03PM 19 THERANOS AND YOUR EXPERIENCES; IS THAT RIGHT?

02:03PM 20 A. YES.

02:03PM 21 Q. AND DO YOU HAVE THAT BINDER WITH YOUR PRIOR TESTIMONY?

02:03PM 22 A. IS IT IN VOLUME 1 OR VOLUME 2?

02:03PM 23 Q. NO. IT MIGHT BE THAT YOU DON'T HAVE THAT YET.

02:03PM 24 VOLUME 2. OKAY. IT'S IN VOLUME 2.

02:03PM 25 A. OKAY.

02:03PM 1 Q. OKAY. AND CAN YOU TAKE A LOOK AT -- IN THAT BINDER IT
02:03PM 2 SHOULD BE NUMBERED EXHIBIT 28396.

02:03PM 3 WERE YOU ABLE TO FIND THAT?

02:03PM 4 A. NOT YET. GIVE ME ONE SECOND.

02:04PM 5 YES.

02:04PM 6 Q. AND IF YOU WOULD LOOK AT PAGE 1092.

02:04PM 7 A. IS THAT THE TOP RIGHT PAGE NUMBER OF THE TRANSCRIPT?

02:04PM 8 Q. YES, THE TOP RIGHT PAGE NUMBER, AND WE'RE TRYING TO FIND
02:04PM 9 1092.

02:04PM 10 A. OKAY.

02:04PM 11 Q. OKAY. AND THIS IS PRIOR TESTIMONY THAT YOU GAVE IN
02:04PM 12 ANOTHER PROCEEDING?

02:04PM 13 A. YES.

02:04PM 14 Q. A TRANSCRIPT OF IT AT LEAST?

02:04PM 15 A. YES.

02:04PM 16 Q. AND IS IT CORRECT THAT YOU RECOGNIZE THIS DOCUMENT THAT I
02:04PM 17 JUST SHOWED YOU, EXHIBIT 9909, AS A DOCUMENT THAT IS KEPT AS A
02:04PM 18 MATTER OF RECORD IN THE CLIA LAB. AND IF YOU COULD REFER BACK
02:04PM 19 TO 9909, THAT MIGHT HELP YOU.

02:05PM 20 A. YES.

02:05PM 21 Q. OKAY. SO IT IS ONE -- JUST TO STICK WITH 9909. THIS IS A
02:05PM 22 DOCUMENT THAT YOU RECOGNIZE AS BEING IN THE FORMAT AND
02:05PM 23 ARRANGEMENT OF A STANDARD OPERATING PROCEDURE AND IN THIS CASE
02:05PM 24 A QUALITY OPERATING PROCEDURE FOR THE THERANOS LAB?

02:05PM 25 A. YES.

02:05PM 1 MR. COOPERSMITH: YOUR HONOR, WE OFFER EXHIBIT 9909.

02:05PM 2 MR. BOSTIC: AUTHENTICATION, YOUR HONOR.

02:05PM 3 THE COURT: I THOUGHT SHE HAD SAID SHE NEVER HAD

02:05PM 4 SEEN THIS BEFORE.

02:05PM 5 MR. COOPERSMITH: THAT'S TRUE, YOUR HONOR, BUT SHE'S

02:05PM 6 ALSO ABLE TO RECOGNIZE IT AS A THERANOS PROCEDURAL DOCUMENT.

02:05PM 7 THE COURT: CAN YOU LAY A LITTLE MORE FOUNDATION.

02:05PM 8 MR. COOPERSMITH: YES, YOUR HONOR. THANK YOU.

02:06PM 9 Q. SO, MS. CHEUNG, WE TALKED BEFORE ABOUT THERE BEING

02:06PM 10 STANDARD OPERATING PROCEDURES IN THE LAB?

02:06PM 11 A. CORRECT.

02:06PM 12 Q. AND DO YOU RECOGNIZE THIS AS IN THAT SAME FORMAT AS WE

02:06PM 13 HAVE SEEN IN OTHER SITUATIONS WITH SOP'S?

02:06PM 14 A. THIS ISN'T IN THE SAME FORMAT.

02:06PM 15 Q. OKAY.

02:06PM 16 A. I'VE NEVER SEEN THIS SPECIFIC SOP.

02:06PM 17 Q. YOU'VE NEVER SEEN THIS PARTICULAR DOCUMENT; RIGHT?

02:06PM 18 A. HUH-UH.

02:06PM 19 Q. AND -- BUT YOU SEE AT THE TOP IT HAS THERANOS, LIKE THE

02:06PM 20 COMPANY LOGO AND THE COMPANY NAME?

02:06PM 21 A. YES.

02:06PM 22 Q. OKAY. AND THEN IT HAS A TITLE OF THE DOCUMENT; IS THAT

02:06PM 23 RIGHT?

02:06PM 24 A. YES.

02:06PM 25 Q. AND WE'VE SEEN THAT IN OTHER FORMATS AS WELL; CORRECT?

02:06PM 1 A. YES.

02:06PM 2 Q. AND IT HAS THE PLACE OF THE SIGNATURES OF VARIOUS PEOPLE?

02:06PM 3 A. YES.

02:06PM 4 Q. AND RIGHT ON THE FIRST PAGE?

02:06PM 5 A. I BELIEVE SO.

02:06PM 6 Q. AND DO YOU SEE THAT THERE ARE, IN FACT, SOME SIGNATURES

02:06PM 7 THERE; RIGHT?

02:06PM 8 A. I THINK THERE'S ONE.

02:06PM 9 Q. OKAY. ONE PERSON'S SIGNATURE?

02:06PM 10 A. YEAH.

02:06PM 11 Q. AND DO YOU REMEMBER EVER HEARING ABOUT SOMEONE NAMED

02:07PM 12 DR. ARNOLD GELB?

02:07PM 13 A. NOT REALLY. I KNEW THAT HE WAS MAYBE THE FORMER LAB

02:07PM 14 DIRECTOR, BUT I DIDN'T KNOW HIM.

02:07PM 15 Q. YOU DIDN'T KNOW HIM, BUT YOU KNEW THAT HE -- YOU HEARD OF

02:07PM 16 THE NAME AND YOU KNEW THE PERSON AS A FORMER LABORATORY

02:07PM 17 DIRECTOR OF THERANOS?

02:07PM 18 A. VAGUELY.

02:07PM 19 Q. AND AS A FORMER LABORATORY DIRECTOR OF THERANOS, WHEN HE

02:07PM 20 WAS DOING THAT JOB BEFORE YOU GOT THERE, WOULD YOU AGREE WITH

02:07PM 21 ME THAT IT WOULD HAVE BEEN THE JOB OF SOMEONE LIKE THAT TO SIGN

02:07PM 22 STANDARD OPERATING PROCEDURES AND THINGS LIKE THAT?

02:07PM 23 A. I BELIEVE SO.

02:07PM 24 Q. OKAY. AND THEN IF YOU GO TO THE SECOND PAGE OF THE

02:07PM 25 EXHIBIT, YOU'RE LOOKING AT 9909, YOU SEE THERE'S A TABLE OF

02:07PM 1 CONTENTS?

02:07PM 2 A. ARE WE BACK ON THE SOP?

02:07PM 3 Q. NO -- YES. THANK YOU.

02:07PM 4 IT'S EXHIBIT 9909.

02:08PM 5 A. CAN YOU REPEAT THE QUESTION.

02:08PM 6 Q. YES. DO YOU SEE ON PAGE 2 OF 8 OF EXHIBIT 9909?

02:08PM 7 A. YES.

02:08PM 8 Q. AND THERE'S A TABLE OF CONTENTS THERE?

02:08PM 9 A. YES.

02:08PM 10 Q. AND YOU'VE SEEN THAT SAME FORMAT WITH ANOTHER SOP THAT

02:08PM 11 WE'VE LOOKED AT TODAY; IS THAT RIGHT?

02:08PM 12 A. YES.

02:08PM 13 MR. COOPERSMITH: YOUR HONOR, I OFFER EXHIBIT 9909,

02:08PM 14 AND I WOULD ALSO REFER THE COURT TO PAGE 1093 OF EXHIBIT 28396

02:08PM 15 AT LINES 4 AND 5.

02:08PM 16 (PAUSE IN PROCEEDINGS.)

02:09PM 17 THE COURT: 28396 DID YOU SAY?

02:09PM 18 MR. COOPERSMITH: YES, YOUR HONOR.

02:09PM 19 THE COURT: IS THAT 28396A? OR 28396?

02:09PM 20 MR. COOPERSMITH: 28396 IS WHAT I HAVE, YOUR HONOR.

02:09PM 21 AND THEN IN PARTICULAR PAGE 1093, LINES 4 AND 5.

02:09PM 22 THE COURT: MR. BOSTIC.

02:09PM 23 MR. BOSTIC: YOUR HONOR, SAME OBJECTION.

02:09PM 24 AUTHENTICITY AND FOUNDATION.

02:09PM 25 AND I DON'T THINK 28396 HAS ANY BEARING -- EXCUSE ME -- ON

02:09PM 1 THE ADMISSIBILITY IN THIS PROCEEDING.

02:10PM 2 THE COURT: I DON'T SEE THE NEXUS BETWEEN THE PAGES

02:10PM 3 THAT YOU'VE CITED, 3 AND 4 TO THIS.

02:10PM 4 MR. COOPERSMITH: ONLY THAT IT'S REFERRING TO THE

02:10PM 5 SAME EXHIBIT, YOUR HONOR.

02:10PM 6 THE COURT: IS IT?

02:10PM 7 MR. COOPERSMITH: YES, YOUR HONOR, EXHIBIT 9909, AND

02:10PM 8 YOU CAN SEE THAT LINE 1 OF PAGE --

02:10PM 9 THE COURT: YES, I SEE THE DOCUMENT.

02:10PM 10 MR. COOPERSMITH: RIGHT.

02:10PM 11 THE COURT: HOW DO WE KNOW WHAT DOCUMENT THIS IS

02:10PM 12 REFERENCING?

02:10PM 13 MR. COOPERSMITH: IT'S THE SAME EXHIBIT NUMBER,

02:10PM 14 YOUR HONOR, EXHIBIT 9909.

02:10PM 15 THE COURT: IT DOESN'T TELL US THAT.

02:10PM 16 MR. COOPERSMITH: OH, I'M SORRY, YOUR HONOR. IF YOU

02:10PM 17 LOOK AT -- AGAIN, I'M ON EXHIBIT 28396, WHICH IS THE

02:11PM 18 TRANSCRIPT.

02:11PM 19 THE COURT: RIGHT.

02:11PM 20 MR. COOPERSMITH: AND THEN ON PAGE 1093 AT THE VERY

02:11PM 21 TOP.

02:11PM 22 THE COURT: 93?

02:11PM 23 MR. COOPERSMITH: PAGE 1093.

02:11PM 24 THE COURT: OKAY.

02:11PM 25 MR. COOPERSMITH: AND THEN AT THE VERY TOP OF LINE 1

02:11PM 1 ON THAT PAGE.

02:11PM 2 THE COURT: YES.

02:11PM 3 MR. COOPERSMITH: THERE'S A REFERENCE TO THAT SAME
02:11PM 4 EXHIBIT, AND THEN I REFER THE COURT TO LINES I GUESS IT'S 4 AND
02:11PM 5 5.

02:11PM 6 AND I JUST WOULD SUBMIT THAT TO THE COURT AS AN EXTRA
02:11PM 7 REASON WHY THIS DOCUMENT SHOULD BE ADMITTED.

02:11PM 8 THE COURT: YOU KNOW, I WAS LOOKING AT THE FRONT END
02:11PM 9 WHERE THE EXHIBIT WAS IDENTIFIED.

02:11PM 10 MR. COOPERSMITH: AND THAT WOULD BE --

02:11PM 11 THE COURT: I'M CERTAIN IT IS.

02:12PM 12 MR. COOPERSMITH: YOUR HONOR, I THINK THAT REFERENCE
02:12PM 13 YOU'RE LOOKING FOR IS ON PAGE 1091 OF THE TRANSCRIPT AT LINE 19
02:12PM 14 AND 20.

02:12PM 15 THE COURT: 19, YES.

02:12PM 16 (PAUSE IN PROCEEDINGS.)

02:12PM 17 THE COURT: ALL RIGHT. THANK YOU.

02:12PM 18 ALL RIGHT. I'LL ADMIT THIS EXHIBIT. IT'S 9909. IS THAT
02:12PM 19 WHAT YOU'RE SEEKING TO ADMIT?

02:12PM 20 MR. COOPERSMITH: YES, YOUR HONOR. THANK YOU.

02:12PM 21 THE COURT: ALL RIGHT. THAT'S ADMITTED.

02:12PM 22 (DEFENDANT'S EXHIBIT 9909 WAS RECEIVED IN EVIDENCE.)

02:12PM 23 THE COURT: AND IT MAY BE PUBLISHED.

02:12PM 24 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

02:13PM 25 BY MR. COOPERSMITH:

02:13PM 1 Q. OKAY. WE SEE AT THE TOP, MS. CHEUNG, IT'S A QUALITY
02:13PM 2 OPERATING PROCEDURE.

02:13PM 3 DO YOU SEE THAT?

02:13PM 4 A. YES.

02:13PM 5 Q. AND BELOW THAT IT'S -- I'VE GOT A TITLE CORRECTIVE AND
02:13PM 6 PREVENTATIVE ACTION?

02:13PM 7 A. YES.

02:13PM 8 Q. OKAY. AND THEN I THINK YOU SAID BEFORE THAT THERE'S ONLY
02:13PM 9 ONE SIGNATURE, BUT IN SEVERAL PLACES; IS THAT RIGHT?

02:13PM 10 A. YES.

02:13PM 11 Q. AND THAT'S DR. ARNOLD GELB?

02:13PM 12 A. YES.

02:13PM 13 Q. AND YOU CAN SEE THERE'S A TITLE LISTED, AND IT SAYS
02:13PM 14 DIRECTOR OF LABORATORY, AND THEN FURTHER DOWN WITH THE NEXT TWO
02:13PM 15 PLACES HE SIGNED IT REFERS TO HIM AS LABORATORY DIRECTOR.

02:13PM 16 A. YES.

02:13PM 17 Q. AND IT SOUNDED LIKE EVEN THOUGH YOU NEVER WORKED WITH
02:13PM 18 DR. GELB, IT SOUNDS LIKE YOU RECALL HIM AS A LABORATORY
02:14PM 19 DIRECTOR IN THE HISTORY OF THERANOS?

02:14PM 20 A. VERY VAGUELY.

02:14PM 21 Q. SO THIS WAS -- DO YOU UNDERSTAND FROM THE DOCUMENT THIS
02:14PM 22 WOULD BE A PROCEDURE THAT WOULD GOVERN THE LAB AT LEAST AT THE
02:14PM 23 TIME THAT IT WAS DRAFTED; CORRECT?

02:14PM 24 A. AT THE TIME IT WAS DRAFTED, YES.

02:14PM 25 Q. OKAY. AND IF YOU LOOK AT IT, IT HAS A PURPOSE STATED,

02:14PM 1 WHICH IS ON PAGE 3 OF 8 IF YOU GO TO THAT PAGE.

02:14PM 2 AND THAT READS, "THE PURPOSE OF THIS PROCEDURE IS TO
02:14PM 3 PROVIDE PROCEDURES FOR THE CORRECTIVE AND PREVENTATIVE ACCURACY
02:14PM 4 (CAPA) PROGRAMS IN THE CLIA LABORATORY. MORE SPECIFICALLY, THE
02:14PM 5 PROCEDURES PROVIDE FOR A SYSTEM AND INSTRUCTIONS, AND AN
02:14PM 6 ASSIGNMENT OF RESPONSIBILITIES FOR INITIATING, REQUESTING,
02:14PM 7 IMPLEMENTING, AND VERIFYING THE EFFECTIVENESS OF CORRECTIVE AND
02:14PM 8 PREVENTATIVE ACTIONS."

02:14PM 9 DO YOU SEE THAT?

02:14PM 10 A. YES.

02:14PM 11 Q. AND YOU UNDERSTAND THAT CLINICAL LABORATORIES MAKE ERRORS
02:15PM 12 SOMETIMES?

02:15PM 13 A. YES.

02:15PM 14 Q. AND, IN FACT, ANY HUMAN ENDEAVOR MAKES ERRORS SOMETIMES.
02:15PM 15 IS THAT A FAIR STATEMENT?

02:15PM 16 A. YES.

02:15PM 17 Q. AND THE IMPORTANT THING, THOUGH, IS TO HAVE SOME KIND OF
02:15PM 18 PLAN TO DEAL WITH THAT WHEN IT HAPPENS; IS THAT FAIR?

02:15PM 19 A. THAT'S FAIR.

02:15PM 20 Q. AND DOES IT APPEAR TO YOU THAT THAT'S WHAT THIS IS?

02:15PM 21 A. YES, BUT I HAVE NEVER SEEN THIS.

02:15PM 22 Q. OKAY. AND WERE YOU AWARE OF EVERY SINGLE SOP IN THE
02:15PM 23 LABORATORY? CAN YOU SAY THAT?

02:15PM 24 A. ONLY THE ONES THAT WERE GIVEN TO ME.

02:15PM 25 Q. BUT AT TIMES YOU DID DOCUMENT ISSUES THAT YOU SAW?

02:15PM 1 A. YES.

02:15PM 2 Q. RIGHT?

02:15PM 3 SO YOU FOLLOWED SOME TYPE OF PROCEDURE TO BRING ISSUES TO

02:15PM 4 THE ATTENTION OF THE PEOPLE THAT YOU WORKED FOR; RIGHT?

02:15PM 5 A. CORRECT.

02:15PM 6 Q. AND THAT COULD HAVE BEEN DR. SIVARAMAN; RIGHT?

02:15PM 7 A. IN THE CLINICAL LAB OR IN THE R&D?

02:15PM 8 Q. IN THE R&D.

02:15PM 9 A. YES.

02:15PM 10 Q. AND IN THE CLINICAL LAB IT COULD HAVE BEEN DR. ROSENDORFF?

02:16PM 11 A. YES.

02:16PM 12 Q. OR DR. PANDORI?

02:16PM 13 A. YES.

02:16PM 14 Q. OR MAYBE EVEN A CLINICAL LAB SCIENTIST LIKE STELLA HOWARD?

02:16PM 15 A. CORRECT.

02:16PM 16 Q. OKAY. AND WHEN YOU DID THAT, BROUGHT AN ISSUE TO THE

02:16PM 17 ATTENTION OF THOSE PEOPLE, THERE WOULD BE AN EARNEST EFFORT TO

02:16PM 18 FIGURE OUT WHAT THE PROBLEM WAS AND TRY TO FIX IT; IS THAT

02:16PM 19 FAIR?

02:16PM 20 A. THAT'S FAIR.

02:16PM 21 Q. OKAY. ON DIRECT I THINK YOU AT LEAST TOUCHED ON THE

02:16PM 22 SUBJECT OF VALIDATION REPORT?

02:16PM 23 A. YES.

02:16PM 24 Q. AND IS A VALIDATION REPORTS SOMETHING THAT NEEDS TO BE

02:16PM 25 DONE BEFORE AN ASSAY CAN BE USED IN THE CLINICAL LAB?

02:16PM 1 A. YES.

02:16PM 2 Q. AND WHEN I SAY VALIDATION REPORT, THAT'S REALLY JUST A

02:16PM 3 REPORT THAT IS DOCUMENTING A STUDY THAT WAS DONE; RIGHT?

02:17PM 4 A. YEAH. IT'S A COLLECTION OF STUDIES USUALLY.

02:17PM 5 Q. OKAY. AND THOSE STUDIES ARE DESIGNED TO TEST SAMPLES TO

02:17PM 6 MAKE SURE THAT THE PERFORMANCE IS SUCH THAT THE PEOPLE WHO

02:17PM 7 APPROVE THE VALIDATION FEEL COMFORTABLE THAT THEY CAN BE RUN IN

02:17PM 8 THE CLIA LAB, MEANING USED FOR TESTING PATIENTS?

02:17PM 9 A. THAT IS CORRECT.

02:17PM 10 Q. OKAY. AND YOU UNDERSTAND THAT THE PROTOCOL AT THERANOS

02:17PM 11 WAS THAT BEFORE AN ASSAY COULD BE PUT INTO THE CLINICAL LAB, IT

02:17PM 12 HAD TO GO THROUGH THIS VALIDATION STUDY AND REPORT PROCESS?

02:17PM 13 A. THAT IS CORRECT.

02:17PM 14 Q. AND I JUST WANT TO LOOK AT ONE OF THOSE WITH YOU.

02:17PM 15 IF YOU COULD TURN IN YOUR BINDER TO 9638.

02:18PM 16 DID YOU FIND IT?

02:18PM 17 A. YES.

02:18PM 18 Q. THANKS. WELL, THIS IS -- WELL, WHY DON'T YOU TELL US WHAT

02:18PM 19 THIS DOCUMENT IS.

02:18PM 20 A. THIS IS A VALIDATION REPORT FOR TSH.

02:18PM 21 Q. AND DO YOU SEE THAT IT WAS SIGNED IN SEPTEMBER OF 2013?

02:18PM 22 A. YES.

02:18PM 23 Q. OKAY. AND THAT WAS RIGHT BEFORE YOU STARTED WORKING AT

02:18PM 24 THERANOS; RIGHT?

02:18PM 25 A. THAT IS CORRECT.

02:18PM 1 Q. OKAY. AND DO YOU RECOGNIZE THIS AS A VALIDATION REPORT
02:18PM 2 GOVERNING THAT PARTICULAR ASSAY, NAMELY, TSH?

02:18PM 3 A. YES.

02:18PM 4 Q. OKAY.

02:18PM 5 WE OFFER EXHIBIT 9368.

02:18PM 6 MR. BOSTIC: AUTHENTICATION, YOUR HONOR.

02:18PM 7 MR. COOPERSMITH: YOUR HONOR, I THINK SHE SAID SHE
02:18PM 8 RECOGNIZED IT.

02:18PM 9 THE COURT: DO YOU RECOGNIZE THIS DOCUMENT?

02:18PM 10 THE WITNESS: I DIDN'T WORK WITH THIS SPECIFIC
02:18PM 11 DOCUMENT.

02:18PM 12 THE COURT: WHY DON'T YOU ASK SOME MORE QUESTIONS.

02:18PM 13 BY MR. COOPERSMITH:

02:18PM 14 Q. JUST TO FLASH BACK TO A FEW MINUTES AGO, A FEW SECONDS
02:18PM 15 AGO --

02:18PM 16 A. OKAY.

02:18PM 17 Q. -- I ASKED YOU WHETHER YOU RECOGNIZED THIS DOCUMENT AS A
02:19PM 18 VALIDATION REPORT FOR THIS PARTICULAR ASSAY, TSH, AND YOU SAID
02:19PM 19 YES; RIGHT?

02:19PM 20 A. SO ARE YOU ASKING ME IF I WORKED WITH THIS DOCUMENT OR
02:19PM 21 THAT I JUST UNDERSTAND THAT THIS IS A DOCUMENT, A VALIDATION
02:19PM 22 DOCUMENT?

02:19PM 23 Q. RIGHT.

02:19PM 24 A. I UNDERSTAND THAT THIS LOOKS LIKE A VALIDATION REPORT THAT
02:19PM 25 WE WORKED ON AT THERANOS, BUT I DIDN'T WORK ON THIS SPECIFIC

02:19PM 1 ASSAY.

02:19PM 2 Q. OKAY. DO YOU RECOGNIZE THE NAME DR. SHARADA SIVARAMAN AND

02:19PM 3 HER SIGNATURE ABOVE HER NAME?

02:19PM 4 A. YES.

02:19PM 5 Q. OKAY. AND YOU RECOGNIZE DR. YOUNG AND HIS SIGNATURE BELOW

02:19PM 6 THAT?

02:19PM 7 A. YES.

02:19PM 8 Q. AND THEN YOU RECOGNIZE DR. ROSENDORFF AND HIS SIGNATURE;

02:19PM 9 CORRECT?

02:19PM 10 A. YES.

02:19PM 11 MR. COOPERSMITH: OKAY. YOUR HONOR, I WOULD OFFER

02:19PM 12 EXHIBIT 9368.

02:19PM 13 MR. BOSTIC: SAME OBJECTION.

02:19PM 14 THE COURT: I'LL ADMIT IT, AND IT MAY BE PUBLISHED.

02:19PM 15 (DEFENDANT'S EXHIBIT 9368 WAS RECEIVED IN EVIDENCE.)

02:19PM 16 BY MR. COOPERSMITH:

02:19PM 17 Q. OKAY. SO NOW WE'RE LOOKING AT THE FIRST PAGE OF

02:19PM 18 EXHIBIT 9368. THIS IS THE TSH ELISA ASSAY REPORT, AND IT'S A

02:20PM 19 VALIDATION DOCUMENT.

02:20PM 20 DO YOU SEE THAT?

02:20PM 21 A. YES.

02:20PM 22 Q. AND DO YOU UNDERSTAND THAT EACH AND EVERY ONE OF THE

02:20PM 23 ASSAYS OR TESTS THAT WOULD BE RUN AT THERANOS HAD TO HAVE ONE

02:20PM 24 OF THESE REPORTS ASSOCIATED WITH IT?

02:20PM 25 A. YES.

02:20PM 1 Q. AND YOU ALSO UNDERSTAND THAT IF THERANOS WAS RUNNING A
02:20PM 2 TEST ON A COMMERCIAL MACHINE, LIKE AN UNMODIFIED COMMERCIAL
02:20PM 3 MACHINE, THERE WAS A DIFFERENT PROCEDURE THAT WOULD HAVE TO GO
02:20PM 4 INTO INSTALLING AND USING THAT PIECE OF EQUIPMENT.

02:20PM 5 DO YOU UNDERSTAND THAT?

02:20PM 6 A. ARE YOU TALKING ON THE SIDE OF THE VENDOR IN THE
02:20PM 7 VALIDATION THAT THEY DO ON THE VENDOR SIDE OR ARE YOU TALKING
02:20PM 8 IN THERANOS, THAT THEY NEEDED VALIDATION TO RUN IT IN THERANOS?

02:20PM 9 Q. NO. THANKS. I'LL ASK A CLEARER QUESTION.

02:20PM 10 SO AT THERANOS IF A SIEMENS ADVIA, FOR EXAMPLE, WAS PUT
02:20PM 11 INTO THE THERANOS LAB, ARE YOU AWARE THAT THERANOS WOULD HAVE
02:20PM 12 TO GO THROUGH A DIFFERENT PROCEDURE CALLED VERIFICATION TO GET
02:20PM 13 THAT MACHINE UP AND RUNNING FOR BLOOD TESTING?

02:20PM 14 A. I WASN'T FAMILIAR WITH THAT PROCEDURE.

02:20PM 15 Q. SO YOU'RE NOT FAMILIAR WITH THAT?

02:20PM 16 A. EXACTLY.

02:20PM 17 Q. BUT YOU UNDERSTAND THAT FOR THE THERANOS TESTS, THE ONES
02:21PM 18 THAT WERE DONE ON EDISON DEVICES OR MODIFIED COMMERCIAL
02:21PM 19 DEVICES, THOSE WOULD HAVE TO GO THROUGH THIS VALIDATION
02:21PM 20 PROCESS?

02:21PM 21 A. CORRECT.

02:21PM 22 Q. OKAY. AND THE ONE THAT WE'RE LOOKING AT NOW, 9368, THAT'S
02:21PM 23 ONE OF THOSE OR HAPPENS TO BE FOR TSH; IS THAT RIGHT?

02:21PM 24 A. THAT IS CORRECT.

02:21PM 25 Q. OKAY. LET'S TAKE A LOOK AT THE DOCUMENT.

02:21PM 1 IF YOU GO TO THE SECOND PAGE, IT'S LABELLED PAGE 2 ON THE
02:21PM 2 BOTTOM RIGHT.

02:21PM 3 DO YOU SEE THE TABLE OF CONTENTS?

02:21PM 4 A. YES.

02:21PM 5 Q. AND THEN THERE'S A SECTION CALLED ASSAY BACKGROUND,
02:21PM 6 REGULATION AND GUIDANCE, CALIBRATION, REFERENCE RANGE,
02:21PM 7 PRECISION, ACCURACY AND COMPARABILITY.

02:21PM 8 AND I'LL STOP THERE FOR A MOMENT.

02:21PM 9 DO YOU UNDERSTAND THAT EACH OF THOSE HAS TO BE DISCUSSED
02:21PM 10 AND ADDRESSED IN A VALIDATION REPORT?

02:21PM 11 A. YES.

02:21PM 12 Q. AND, FOR EXAMPLE, PRECISION, YOU UNDERSTAND THAT WOULD
02:22PM 13 HAVE TO BE ADDRESSED BEFORE -- TO THE SATISFACTION OF THE
02:22PM 14 SIGNERS OF THE DOCUMENT BEFORE THE ASSAY COULD BE PUT ONLINE IN
02:22PM 15 THE CLINICAL LAB?

02:22PM 16 A. YES.

02:22PM 17 Q. AND PRECISION IS A MEASURE OF CONSISTENCY, RIGHT, GETTING
02:22PM 18 THE SAME RESULT OVER AND OVER AGAIN?

02:22PM 19 A. OVER A COURSE OF TIME, YES.

02:22PM 20 Q. RIGHT. AND THEN ACCURACY WOULD BE HOW CLOSE THE RESULT
02:22PM 21 YOU GET IS TO THE TRUE VALUE OF THE SAMPLE THAT YOU'RE TESTING?

02:22PM 22 A. CORRECT.

02:22PM 23 Q. OKAY. YOU UNDERSTOOD THAT FROM YOUR WORK AT THERANOS?

02:22PM 24 A. YES.

02:22PM 25 Q. OKAY. AND THEN THERE'S ANOTHER SECTION IN THE TABLE OF

02:22PM 1 CONTENTS NUMBER 7 CALLED DILUTION LINEARITY?

02:22PM 2 A. YES.

02:22PM 3 Q. AND YOU TALKED ABOUT DILUTION BEFORE, AND YOU TALKED ABOUT
02:22PM 4 HOW THERE WAS A MACHINE CALLED THE TECAN.

02:22PM 5 DO YOU REMEMBER THAT?

02:22PM 6 A. YES.

02:22PM 7 Q. AND IT SOUNDS LIKE ONE OF THE JOBS OF THE TECAN WAS TO
02:22PM 8 DILUTE THE SAMPLE IN SOME AMOUNT?

02:22PM 9 A. YES.

02:22PM 10 Q. AND BEFORE IT WAS RUN ON A THERANOS DEVICE?

02:23PM 11 A. YES.

02:23PM 12 Q. OKAY. AND WHEN YOU WERE WORKING THERE, YOU DIDN'T THINK
02:23PM 13 THERE WAS ANYTHING WRONG WITH THAT, DID YOU?

02:23PM 14 A. BASED ON THE ASSAY DEVELOPMENT, THAT WAS JUST THE STANDARD
02:23PM 15 PROTOCOL THAT WE HAD.

02:23PM 16 Q. OKAY. SO WHEN YOU WERE TESTIFYING BEFORE, YOU WEREN'T
02:23PM 17 MEANING TO SUGGEST THAT THERE WAS SOMETHING WRONG WITH
02:23PM 18 DILUTION?

02:23PM 19 A. NO.

02:23PM 20 Q. OKAY. AND, IN FACT, ARE YOU AWARE THAT FOR OTHER
02:23PM 21 COMMERCIAL DEVICES, DILUTION IS PART OF THE STANDARD OPERATING
02:23PM 22 PROCEDURE OF EVEN COMMERCIAL MACHINES THAT EVEN WEREN'T MADE BY
02:23PM 23 THERANOS?

02:23PM 24 A. DEPENDING ON THE STEP OF THE ASSAY, THAT IS SOMETIMES THE
02:23PM 25 STEP, YOU'LL DO A DILUTION STEP.

02:23PM 1 Q. OKAY. AND SO IT'S NOT UNIQUE TO THERANOS THAT SOMETIMES
02:23PM 2 THE SAMPLE IS DILUTED BEFORE IT'S PLACED IN THE MACHINE TO RUN
02:23PM 3 FOR A TEST?

02:23PM 4 A. IT DEPENDS. YOU WOULD HAVE TO LOOK AT THE ASSAY, AT WHICH
02:23PM 5 STEP OR WHICH JUNCTURE THAT HAPPENS. BUT, YES, DILUTION IS A
02:23PM 6 STEP THAT OCCURS ON DIFFERENT ASSAYS FOR BLOOD DIAGNOSTICS.

02:24PM 7 Q. OKAY. AND JUST TO MAKE SURE WE HAVE THAT POINT CLEAR --
02:24PM 8 MAY I APPROACH, YOUR HONOR?

02:24PM 9 THE COURT: YES.

02:24PM 10 MR. COOPERSMITH: (HANDING.)

02:24PM 11 MAY I HAND IT UP TO THE BENCH, YOUR HONOR?

02:24PM 12 THE COURT: YES.

02:24PM 13 BY MR. COOPERSMITH:

02:24PM 14 Q. OKAY. YOU HAVE WHAT HAS BEEN MARKED AS EXHIBIT 204 IN
02:24PM 15 FRONT OF YOU?

02:24PM 16 A. YES.

02:24PM 17 Q. THANK YOU.

02:24PM 18 DO YOU SEE THAT THIS IS AN ADVIA 1800 CHEMISTRY SYSTEM
02:25PM 19 OPERATING DRIVE?

02:25PM 20 A. YES.

02:25PM 21 Q. AND IS THAT THE SAME ADVIA 1800 SYSTEM THAT YOU UNDERSTAND
02:25PM 22 WAS IN USE FOR SOME TESTS AT THERANOS?

02:25PM 23 A. YES.

02:25PM 24 Q. AND THE BULLET ON THE BOTTOM THERE INDICATES THAT THE
02:25PM 25 MANUFACTURER IS SIEMENS.

02:25PM 1 DO YOU SEE THAT?

02:25PM 2 A. YES.

02:25PM 3 Q. AND YOU TESTIFIED ABOUT THIS PARTICULAR BLOOD TESTING
02:25PM 4 INSTRUMENT ON DIRECT; RIGHT?

02:25PM 5 A. YES.

02:25PM 6 MR. COOPERSMITH: YOUR HONOR, WE OFFER EXHIBIT 204.

02:25PM 7 MR. BOSTIC: AUTHENTICATION, YOUR HONOR.

02:25PM 8 THE COURT: DO YOU WANT TO LAY SOME MORE FOUNDATION
02:25PM 9 FOR THIS?

02:25PM 10 MR. COOPERSMITH: YOUR HONOR, I CAN. I WILL JUST
02:25PM 11 NOTE THAT WE DO HAVE A STIPULATION TO THESE BATES NUMBER BEING
02:25PM 12 AUTHENTIC, SO I JUST THOUGHT I WOULD POINT THAT OUT.

02:25PM 13 MR. BOSTIC: SO, YOUR HONOR, I DON'T BELIEVE THAT
02:25PM 14 STIPULATION STIPULATES THAT WHAT IS IN FRONT OF US IS AN
02:25PM 15 AUTHENTIC COPY OF THE ADVIA 1800 USER GUIDE. I DON'T THINK
02:25PM 16 THAT STIPULATION COVERS THAT.

02:26PM 17 MR. COOPERSMITH: I THOUGHT IT DID, BUT I CAN ASK
02:26PM 18 THE WITNESS MORE QUESTIONS IF YOU WANT ME TO.

02:26PM 19 THE COURT: SURE. WHY DON'T YOU.

02:26PM 20 BY MR. COOPERSMITH:

02:26PM 21 Q. MS. CHEUNG, DO YOU RECOGNIZE THIS AS THE ADVIA 1800
02:26PM 22 OPERATORS GUIDE?

02:26PM 23 A. HAVE I SEEN THIS BEFORE?

02:26PM 24 Q. RIGHT.

02:26PM 25 A. I DON'T RECALL.

02:26PM 1 Q. AND I THINK YOU TESTIFIED THAT YOU SOMETIMES RAN SAMPLES
02:26PM 2 ON THE ADVIA?

02:26PM 3 A. YES.

02:26PM 4 Q. AND ARE YOU SAYING THAT YOU RAN SAMPLES ON THE ADVIA BUT
02:26PM 5 YOU NEVER LOOKED AT THE USERS GUIDE?

02:26PM 6 A. WE HAD OUR OWN INTERNAL SOP'S ABOUT HOW WE OPERATED THE
02:26PM 7 ADVIA.

02:26PM 8 Q. OKAY. AND DID THE INTERNAL SOP'S CONTAIN INFORMATION
02:26PM 9 ABOUT DILUTION?

02:26PM 10 A. I DON'T REMEMBER.

02:26PM 11 Q. OKAY. YOU DON'T REMEMBER.

02:26PM 12 AND IF YOU COULD TURN IN THE DOCUMENT TO PAGE 23. AND IF
02:27PM 13 YOU COULD TAKE A LOOK AT -- JUST BROWSE 23, 24, AND 25 JUST FOR
02:27PM 14 A SECOND, AND I'LL ASK YOU A QUESTION ABOUT THAT.

02:27PM 15 A. OKAY.

02:27PM 16 Q. DOES THAT REFRESH YOUR MEMORY THAT THE ADVIA 1800 ALSO HAD
02:27PM 17 INTERNAL DILUTION STEPS THAT IT WENT THROUGH?

02:27PM 18 A. I HAVE NEVER SEEN THIS. I JUST LEARNED HOW TO OPERATE THE
02:27PM 19 SIEMENS ADVIA. I DIDN'T NECESSARILY UNDERSTAND THE INTERNAL
02:27PM 20 MECHANICS OF THE ADVIA.

02:27PM 21 Q. OKAY. SO YOU JUST KNEW HOW TO PUT A SAMPLE IN BUT NOT
02:27PM 22 WHAT ACTUALLY WENT ON INSIDE OF THE MACHINE OR ANYTHING LIKE
02:27PM 23 THAT?

02:27PM 24 A. NOT TO THIS DETAIL, NO.

02:27PM 25 Q. OKAY. AND THAT WOULD ALSO MEAN, TELL ME IF I'M RIGHT,

02:28PM 1 THAT YOU DIDN'T KNOW WHAT INTERNAL ALGORITHMS OR MATHEMATICAL
02:28PM 2 EQUATIONS WORKED IN THE SOFTWARE OF THE ADVIA 1800; IS THAT
02:28PM 3 RIGHT?

02:28PM 4 A. THAT IS CORRECT.

02:28PM 5 Q. AND IF IT WASN'T, YOU WOULD KNOW ABOUT THAT. THAT WAS
02:28PM 6 PART OF YOUR JOB; IS THAT FAIR?

02:28PM 7 A. THAT'S FAIR.

02:28PM 8 Q. OKAY. LET'S GO BACK TO EXHIBIT 9368. THIS IS THE TSH
02:28PM 9 ASSAY VALIDATION REPORT. IT'S ON YOUR SCREEN.

02:28PM 10 SO LET'S JUST GO THROUGH SOME OF THIS DOCUMENT. AND IT'S
02:28PM 11 A FAIRLY LENGTHY DOCUMENT. I THINK IT GOES, IF YOU LOOK AT THE
02:28PM 12 LAST PAGE, UP TO PAGE 51; IS THAT RIGHT?

02:28PM 13 A. YES.

02:28PM 14 Q. SO THAT'S 51 PAGES OF INFORMATION THAT HAD TO BE COMPILED
02:28PM 15 JUST TO VALIDATE THIS ONE ASSAY, WHICH IS TSH?

02:28PM 16 A. THAT IS CORRECT.

02:28PM 17 Q. AND THAT'S A THYROID RELATED TEST; IS THAT RIGHT?

02:28PM 18 A. YES.

02:28PM 19 Q. OKAY. AND THE PEOPLE WHO DID THE VALIDATION, WOULD THAT
02:29PM 20 BE THE SCIENTIFIC TEAM AT THERANOS?

02:29PM 21 A. YES.

02:29PM 22 Q. SO, FOR EXAMPLE, DR. SIVARAMAN?

02:29PM 23 A. AND THE ELISA TEAM, YES.

02:29PM 24 Q. AND SO YOU WERE ONE OF THE PEOPLE ON THE ELISA TEAM;
02:29PM 25 RIGHT?

02:29PM 1 A. YES, FOR A PORTION OF MY EMPLOYMENT.

02:29PM 2 Q. AND YOUR JOB AT YOUR POSITION OR LEVEL IN THE ELISA TEAM
02:29PM 3 WAS TO RUN THE SAMPLES AND REPORT THE RESULTS SO THAT THE
02:29PM 4 SCIENTIFIC TEAM COULD COMPILE THIS TYPE OF REPORT; IS THAT
02:29PM 5 FAIR?

02:29PM 6 A. THAT IS FAIR.

02:29PM 7 Q. OKAY. AND WHEN YOU DID THAT, IS IT FAIR TO SAY THAT YOUR
02:29PM 8 EFFORT WAS TO PRESENT ACCURATE DATA?

02:29PM 9 A. YES.

02:29PM 10 Q. AND YOU FELT THE SAME OF YOUR COLLEAGUES; IS THAT RIGHT?

02:29PM 11 A. SOMETIMES.

02:29PM 12 Q. OKAY. YOUR COLLEAGUES IN THE ELISA DEVELOPMENT TEAM IN
02:29PM 13 THE RESEARCH AND DEVELOPMENT DEPARTMENT, RIGHT, ARE YOU SAYING
02:30PM 14 THAT SOMEONE DID NOT PRESENT ACCURATE DATA?

02:30PM 15 A. IT WAS A BIT COMPLICATED AT THERANOS SIMPLY BECAUSE THERE
02:30PM 16 WAS SO MUCH OUTLIER DELETION THAT WAS OCCURRING, SO WE WEREN'T
02:30PM 17 ALWAYS SHOWCASING ALL OF THE DATA THAT WE WERE RUNNING BASED ON
02:30PM 18 OUR EXPERIMENTS BECAUSE A LOT OF IT WAS ELIMINATED.

02:30PM 19 Q. AND YOU'RE TALKING SPECIFICALLY ABOUT THE OUTLIER ISSUE?

02:30PM 20 A. YES.

02:30PM 21 Q. AND THAT'S THE ISSUE THAT MR. BOSTIC ASKED YOU ABOUT?

02:30PM 22 A. YES.

02:30PM 23 Q. OKAY. WE'LL GET TO THAT.

02:30PM 24 BUT FOR THE MOMENT I JUST WANTED TO ASK YOU, YOU
02:30PM 25 UNDERSTOOD THAT DR. SIVARAMAN AND DR. ROSENDORFF AND OTHERS ALL

02:30PM 1 WERE APPROVING OF THAT PROCEDURE TO DELETE CERTAIN OUTLIERS IN

02:30PM 2 THE DATA THAT YOU REFERRED TO; RIGHT?

02:30PM 3 A. WHEN I WAS ON THE ELISA TEAM, DR. SIVARAMAN WAS.

02:30PM 4 Q. OKAY. AND YOU DON'T THINK DR. SIVARAMAN WAS TRYING TO DO

02:31PM 5 SOMETHING WRONG OR INCORRECT, DO YOU?

02:31PM 6 A. NO. I THINK SHE WAS TRYING TO COMPLETE THE REPORT.

02:31PM 7 Q. OKAY. BUT SHE'S A PH.D.?

02:31PM 8 A. YES.

02:31PM 9 Q. AND SHE HAS A WEALTH OF EXPERIENCE AND KNOWLEDGE?

02:31PM 10 A. YES.

02:31PM 11 Q. AND THAT'S WHAT SHE DECIDED IS THAT WOULD BE APPROPRIATE

02:31PM 12 TO DELETE OUTLIERS?

02:31PM 13 A. YES.

02:31PM 14 Q. OKAY. LET'S GO BACK TO EXHIBIT 9368, AND IF YOU'D GO TO

02:31PM 15 PAGE 25.

02:31PM 16 DO YOU SEE THERE'S A CHART THERE?

02:31PM 17 A. YES.

02:31PM 18 Q. AND IT'S THERANOS SYSTEM VERSUS PREDICATE METHOD?

02:32PM 19 A. YES.

02:32PM 20 Q. AND YOU'VE SEEN THIS CHART BEFORE; RIGHT?

02:32PM 21 A. I DON'T REMEMBER.

02:32PM 22 Q. OKAY. YOU UNDERSTAND THAT -- OR DO YOU UNDERSTAND THAT

02:32PM 23 THAT GROUPING OF DOTS SHOWS THE CORRELATION BETWEEN THE

02:32PM 24 PREDICATE DEVICE OR THE COMMERCIAL DEVICE VERSUS THE THERANOS

02:32PM 25 DEVICE?

02:32PM 1 A. CORRECT.

02:32PM 2 Q. AND THEN IT HAS AN R SQUARED OF .9205.

02:32PM 3 DO YOU SEE THAT?

02:32PM 4 A. YES.

02:32PM 5 Q. AND YOU DON'T CALCULATE THE R SQUARED; RIGHT?

02:32PM 6 A. NO.

02:32PM 7 Q. AND DO YOU KNOW WHAT THAT IS EXACTLY?

02:32PM 8 A. IT'S A MEASUREMENT OF ALIGNMENT, BUT I CAN'T REMEMBER AT

02:32PM 9 THIS POINT. IT WAS A LONG TIME AGO.

02:32PM 10 Q. BECAUSE THAT'S NOT YOUR BACKGROUND?

02:32PM 11 A. CORRECT.

02:32PM 12 Q. AND THAT WOULD BE LIKE SOMEONE WHO HAS A STATISTICAL

02:32PM 13 BACKGROUND?

02:32PM 14 A. YES.

02:32PM 15 Q. ALL RIGHT. BUT YOU UNDERSTAND THAT THIS DATA WAS

02:32PM 16 SOMETHING THAT WAS NECESSARY TO HAVE THE VALIDATION REPORT MEET

02:32PM 17 ENOUGH STANDARDS FOR IT TO BE PLACED IN THE CLIA LAB; RIGHT?

02:32PM 18 A. CORRECT.

02:32PM 19 Q. OKAY. AND THEN IF YOU GO TO THE NEXT PAGE -- I'M SORRY,

02:33PM 20 PAGE 27. SO IT'S TWO PAGES MORE.

02:33PM 21 DO YOU SEE THERE'S THIS FIGURE 10 SCATTER PLOT CLSI

02:33PM 22 GUIDELINE?

02:33PM 23 A. YES.

02:33PM 24 Q. AND DO YOU KNOW WHAT CLSI IS?

02:33PM 25 A. NO.

02:33PM 1 Q. AND DO YOU UNDERSTAND THAT IT'S AN ORGANIZATION THAT HELPS
02:33PM 2 CLIA LABS MEET CERTAIN STANDARDS?

02:33PM 3 A. NO.

02:33PM 4 Q. OKAY. NOW, PRIOR TO ONE OF THESE VALIDATION REPORT
02:34PM 5 STUDIES THAT RESULT IN A REPORT, THERE WERE PREVIOUS STEPS TO
02:34PM 6 WORK ON THE ASSAY THAT YOU'RE AWARE; RIGHT?

02:34PM 7 A. CAN YOU REPEAT THAT QUESTION.

02:34PM 8 Q. SURE.

02:34PM 9 SO JUST TO BE MORE SPECIFIC, PRIOR TO THE TIME WHEN AN
02:34PM 10 ASSAY OR TEST WAS VALIDATED FOR USE IN THE CLIA LABS FOR
02:34PM 11 PATIENT TESTING, IT WOULD HAVE GONE THROUGH A RESEARCH AND
02:34PM 12 DEVELOPMENT PROCESS; IS THAT CORRECT?

02:34PM 13 A. YES.

02:34PM 14 Q. AND IN THE RESEARCH AND DEVELOPMENT PROCESS, THERE WERE
02:34PM 15 ALSO REPORTS GENERATED DURING THAT PROCESS?

02:34PM 16 DO YOU REMEMBER THAT?

02:34PM 17 A. I WASN'T FAMILIAR WITH THAT PROCESS.

02:34PM 18 Q. OKAY. SO, FOR EXAMPLE, TAKE A LOOK AT IN YOUR BINDER
02:34PM 19 EXHIBIT 9227.

02:34PM 20 I'M SORRY, LET ME REFER YOU TO A DIFFERENT ONE FIRST.
02:34PM 21 9208. 9208.

02:35PM 22 DO YOU HAVE THAT IN FRONT OF YOU, MS. CHEUNG?

02:35PM 23 A. YES.

02:35PM 24 Q. OKAY. AND THAT TITLE IS HEPATITIS C VIRUS IGG ASSAY
02:35PM 25 DEVELOPMENT REPORT?

02:35PM 1 A. THAT'S CORRECT.

02:35PM 2 Q. AND AN ASSAY DEVELOPMENT REPORT IS SOMETHING DIFFERENT

02:35PM 3 FROM A VALIDATION REPORT FOR THE CLINICAL LAB; RIGHT?

02:35PM 4 A. CORRECT.

02:35PM 5 Q. AND THIS WOULD BE THE -- I'LL START AGAIN. SORRY.

02:35PM 6 THE ASSAY DEVELOPMENT REPORT WOULD BE THE WORK PRODUCT OF

02:35PM 7 THE WORK ON RESEARCH AND DEVELOPMENT IN THE CLIA LAB TO DEVELOP

02:35PM 8 A PARTICULAR ASSAY; IS THAT RIGHT?

02:35PM 9 A. I ASSUME SO, BUT I NEVER WORKED ON THESE DOCUMENTS.

02:36PM 10 Q. OKAY. YOU WORKED IN THE AREA OF ASSAY DEVELOPMENT

02:36PM 11 SOMETIMES?

02:36PM 12 A. I WORKED IN THE DEPARTMENT OF VALIDATION OF THE ASSAYS IN

02:36PM 13 RESEARCH AND DEVELOPMENT, BUT I DIDN'T SPECIFICALLY WORK IN THE

02:36PM 14 ASSAY DEVELOPMENT ASPECT OF THE R&D LAB UNDER ELISA.

02:36PM 15 Q. OKAY. SO THERE WERE OTHER PEOPLE, NOT YOURSELF, WHO WOULD

02:36PM 16 HAVE BEEN RESPONSIBLE FOR DEVELOPING ASSAY DEVELOPMENT REPORTS?

02:36PM 17 A. CORRECT.

02:36PM 18 Q. OKAY. WERE YOU ANY PART OF THAT WORK AT ALL WHERE YOU

02:36PM 19 WOULD EVEN RUN SAMPLES FOR THAT PURPOSE?

02:36PM 20 A. NOT FOR ASSAY DEVELOPMENT, NO.

02:36PM 21 Q. OKAY. SO IN RESEARCH AND DEVELOPMENT, I ASSUME THAT YOU

02:36PM 22 WERE WORKING ON SOMETHING TOWARDS A GOAL?

02:36PM 23 A. THAT WAS THE VALIDATION REPORTS THAT WE EXPLORED BEFORE.

02:36PM 24 Q. OKAY. SO YOU IN PARTICULAR WERE WORKING ON THE VALIDATION

02:36PM 25 REPORTS AND NOT THE ASSAY DEVELOPMENT REPORTS?

02:36PM 1 A. CORRECT.

02:36PM 2 Q. OKAY. AND IS IT YOUR TESTIMONY, MS. CHEUNG, THAT YOU WERE

02:37PM 3 CLOSE TO THE VALIDATION REPORTS?

02:37PM 4 A. IN WHAT CAPACITY?

02:37PM 5 Q. DID YOU WORK CLOSELY WITH VALIDATION REPORTS?

02:37PM 6 A. I -- SO TO THE EXTENT I WORKED WITH VALIDATION REPORTS WAS

02:37PM 7 THAT I WAS CONDUCTING THE EXPERIMENTS THAT WERE NECESSARY TO

02:37PM 8 COMPLETE THE WORK ARTICULATED IN VALIDATION REPORTS AND WOULD

02:37PM 9 SUBMIT THOSE TO THE HEAD OF THE DEPARTMENT.

02:37PM 10 SO I WASN'T INVOLVED IN THE WRITING. I WASN'T INVOLVED IN

02:37PM 11 THE PRODUCTION OF THE VALIDATION REPORTS EXCEPT FOR PROVIDING

02:37PM 12 THE DATA, THE EXPERIMENTS THAT WERE NECESSARY TO COMPLETE IT.

02:37PM 13 Q. OKAY. AND I TAKE IT YOU WERE NOT INVOLVED IN THE

02:37PM 14 STATISTICAL ANALYSIS THAT MIGHT BE NEEDED TO FINALIZE ONE OF

02:38PM 15 THESE VALIDATION REPORTS?

02:38PM 16 A. THAT IS CORRECT.

02:38PM 17 Q. OKAY. I WANT TO GO TO A SOMEWHAT DIFFERENT TOPIC AND THAT

02:38PM 18 IS, DO YOU REMEMBER ON DIRECT EXAMINATION, I THINK IT WAS

02:38PM 19 YESTERDAY --

02:38PM 20 A. YEAH.

02:38PM 21 Q. -- YOU LOOKED AT AN EXHIBIT THAT HAD LIKE A THERANOS TEST

02:38PM 22 MENU? DO YOU REMEMBER THAT?

02:38PM 23 A. YES.

02:38PM 24 Q. AND I'LL JUST POINT YOU TO WHERE IT IS AT. I BELIEVE IT

02:38PM 25 IS EXHIBIT 3741A.

02:39PM 1 A. YOU SAID 3741A?

02:39PM 2 Q. 3741A. YES. THANK YOU.

02:39PM 3 ONE MOMENT, YOUR HONOR.

02:39PM 4 THE COURT: YES.

02:39PM 5 (DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)

02:39PM 6 THE WITNESS: I DON'T BELIEVE I HAVE THIS.

02:39PM 7 THE COURT: 3741 IS THE GOVERNMENT'S EXHIBIT?

02:39PM 8 MR. COOPERSMITH: YES, YOUR HONOR. I THINK IT WAS

02:40PM 9 LABELLED A BECAUSE IT WAS THE FIRST SEVEN PAGES OF IT.

02:40PM 10 AND I HAVE -- I DON'T THINK I HANDED IT UP, BUT I THINK

02:40PM 11 THE EXHIBIT THAT WE'RE REFERRING TO FOR THE MOMENT IS 3741

02:40PM 12 CAPITAL A.

02:40PM 13 THE COURT: SO THAT'S THE FIRST SEVEN PAGES OF

02:40PM 14 3471 --

02:40PM 15 MR. COOPERSMITH: I'M SORRY. 3741A.

02:40PM 16 THE COURT: AND THAT IS FOUND IN THE BINDER, THE

02:40PM 17 GOVERNMENT'S BINDER. AND IS IT THE FIRST SEVEN PAGES?

02:40PM 18 MR. COOPERSMITH: RIGHT. I THINK IT WAS MARKED A

02:40PM 19 BECAUSE THAT WAS THE DESIGNATION FOR THOSE FIRST SEVEN PAGES.

02:40PM 20 THE COURT: RIGHT. THIS WITNESS DOESN'T HAVE THAT

02:40PM 21 SEPARATION. SHE ONLY HAS THE FULL SET. SO IT'S ONLY THE FIRST

02:40PM 22 SEVEN PAGES.

02:40PM 23 IS THAT ACCURATE?

02:40PM 24 MR. COOPERSMITH: THAT WILL WORK.

02:40PM 25 THE COURT: DO YOU UNDERSTAND THAT?

02:40PM 1 THE WITNESS: AND THAT WAS FROM THE GOVERNMENT?

02:40PM 2 THE COURT: CORRECT.

02:40PM 3 THE WITNESS: YES, I HAVE THAT.

02:40PM 4 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

02:40PM 5 CAN I APPROACH?

02:40PM 6 THE COURT: YES.

02:41PM 7 MR. COOPERSMITH: (HANDING.)

02:41PM 8 Q. OKAY. MS. CHEUNG, I KNOW WHAT YOU REALLY WANTED WAS
02:41PM 9 ANOTHER BINDER UP THERE ON THE STAND, SO MY APOLOGIES FOR THAT.
02:41PM 10 HOPEFULLY YOU HAVE ROOM TO PUT IT SOMEWHERE.

02:41PM 11 AND I JUST WANT TO GO THROUGH 3741A. THAT'S THAT FIRST
02:41PM 12 SEVEN PAGES OF THE EXHIBIT THAT JUDGE DAVILA JUST TOLD YOU
02:41PM 13 ABOUT.

02:41PM 14 AND I'M GOING TO REFER BACK AND FORTH TO THE BINDER I'VE
02:41PM 15 JUST HANDED YOU. OKAY?

02:41PM 16 A. OKAY.

02:41PM 17 MR. BOSTIC: SORRY TO INTERRUPT, COUNSEL.

02:41PM 18 DO I HAVE A COPY OF THAT BINDER THAT YOU'VE JUST HANDED
02:41PM 19 UP?

02:41PM 20 MR. COOPERSMITH: YOU SHOULD.

02:41PM 21 MR. BOSTIC: IS IT 1 OR 2?

02:42PM 22 BY MR. COOPERSMITH:

02:42PM 23 Q. OKAY. SO, MS. CHEUNG, DO YOU REMEMBER DURING MR. BOSTIC'S
02:42PM 24 EXAMINATION HE POINTED YOU TOWARDS THE LAST PAGE. IT'S
02:42PM 25 ACTUALLY THE SEVENTH PAGE.

02:42PM 1 AND JUST TO MAKE IT EASY, EXHIBIT 3741 HAS THESE BATES
02:42PM 2 NUMBERS AT THE VERY BOTTOM, AND THE ONE THAT I'M REFERRING TO
02:42PM 3 IS ENDING IN 15291.

02:42PM 4 DO YOU SEE THAT?

02:42PM 5 A. YEAH.

02:42PM 6 Q. OKAY. AND IF WE COULD PUT --

02:42PM 7 THIS IS ALREADY ADMITTED, YOUR HONOR.

02:42PM 8 IF WE COULD PUT THAT PAGE UP ON THE SCREEN. RIGHT.

02:42PM 9 SO DO YOU REMEMBER THAT MR. BOSTIC WAS ASKING YOU SOME
02:42PM 10 QUESTIONS ABOUT THIS PAGE?

02:42PM 11 A. YES.

02:42PM 12 Q. AND DO YOU REMEMBER THAT HE WAS ASKING YOU WHICH ONE OF
02:42PM 13 THESE RAN ON THERANOS TECHNOLOGY?

02:42PM 14 DO YOU REMEMBER THAT?

02:42PM 15 A. YES.

02:43PM 16 Q. AND I THINK YOU SAID THERE WERE FOUR OR FIVE OF THESE?

02:43PM 17 A. YES.

02:43PM 18 Q. OKAY. AND IF YOU LOOK AT THE REST OF THIS EXHIBIT, I'M
02:43PM 19 REFERRING TO THE FIRST SEVEN PAGES OF WHAT YOU HAVE, YOU SEE
02:43PM 20 THAT THE EXHIBIT IS JUST MADE UP OF, YOU KNOW, VARIOUS TEST
02:43PM 21 MENUS; RIGHT?

02:43PM 22 AND WOULD YOU AGREE WITH ME THAT THE TESTS LISTED ON THAT
02:43PM 23 LAST PAGE ARE ALSO LISTED -- SOME OF THEM ARE AT LEAST LISTED
02:43PM 24 ON THE OTHER PAGES AS WELL?

02:43PM 25 A. YES.

02:43PM 1 Q. OKAY. SO LET'S START WITH THE VERY FIRST PAGE OF
02:43PM 2 EXHIBIT 3741, AND IT'S THE PAGE WITH THE NUMBER ON THE BOTTOM
02:43PM 3 THAT'S 15286.
02:43PM 4 AND I JUST WANT TO ASK YOU SORT OF ASSAY BY ASSAY HERE.
02:43PM 5 SO, FIRST OF ALL, DO YOU SEE UNDER -- THEY'RE ALPHABETICAL
02:43PM 6 ON THE FIRST PAGE.
02:43PM 7 DO YOU SEE THAT?
02:43PM 8 A. YES.
02:43PM 9 Q. AND SO UNDER A, THE A SECTION THERE'S AN ASSAY CALLED
02:44PM 10 ALANINE AMINOTRANSFERASE (ALT/SGPT).
02:44PM 11 DO YOU SEE THAT?
02:44PM 12 A. YES.
02:44PM 13 Q. AND ARE YOU AWARE THAT THAT ASSAY WAS BEING RUN ON A
02:44PM 14 THERANOS TECHNOLOGY THAT WAS KNOWN AS A MODIFIED PREDICATE OR A
02:44PM 15 MODIFIED COMMERCIAL DEVICE?
02:44PM 16 A. I DON'T REMEMBER.
02:44PM 17 Q. YOU DON'T REMEMBER.
02:44PM 18 AND DO YOU ALSO REMEMBER THAT THAT PARTICULAR ASSAY WAS
02:44PM 19 PART OF THE PANEL OF TESTS THAT WERE RUN WITH COMPREHENSIVE
02:44PM 20 METABOLIC PANELS?
02:44PM 21 A. THE CHEM 14?
02:44PM 22 Q. CHEM 14?
02:44PM 23 A. I WOULD HAVE TO LOOK AT IT, BUT I DON'T REMEMBER. I
02:44PM 24 IMAGINE IT WAS THE CHEM 14.
02:44PM 25 Q. I'M SORRY, YOU DO THINK IT WAS THE CHEM 14?

02:44PM 1 A. YEAH.

02:44PM 2 Q. OKAY. SO DO YOU UNDERSTAND THAT A CHEM 14 HAS A NUMBER OF

02:44PM 3 ASSAYS THAT ARE RUN AS PART OF THAT PANEL?

02:44PM 4 A. YES.

02:44PM 5 Q. AND SO CHEM 14, IT'S PROBABLY 14 DIFFERENT TESTS; RIGHT?

02:44PM 6 A. YES.

02:44PM 7 Q. AND THAT'S WHY IT'S CALLED CHEM 14?

02:45PM 8 A. CORRECT.

02:45PM 9 Q. AND SO LET'S GO TO THE NEXT ONE.

02:45PM 10 WELL, ACTUALLY LET'S REFER TO THE BINDER FIRST.

02:45PM 11 SO THE BINDER HAS TABS IN IT, THE ONE THAT I'VE HANDED YOU

02:45PM 12 A FEW MINUTES AGO?

02:45PM 13 A. YES.

02:45PM 14 Q. AND I JUST WANT YOU TO REFER TO 0 -- I'M SORRY,

02:45PM 15 EXHIBIT 9013. THEY'RE ALL IN NUMERICAL ORDER SO HOPEFULLY YOU

02:45PM 16 CAN FIND THEM.

02:45PM 17 DO YOU HAVE IT?

02:45PM 18 A. YES.

02:45PM 19 Q. AND DO YOU SEE THAT AS A VALIDATION REPORT FOR MODIFIED

02:45PM 20 SIEMENS ASSAY OF ALANINE AMINOTRANSFERASE?

02:45PM 21 A. YES.

02:45PM 22 Q. OKAY. IN FACT, THE FACT THAT IT'S A VALIDATION REPORT,

02:45PM 23 THAT TELLS YOU IT'S ON ONE OF THESE MODIFIED PREDICATE

02:45PM 24 MACHINES; RIGHT?

02:45PM 25 A. YES.

02:45PM 1 Q. AND LET'S GO TO THE NEXT ONE.

02:45PM 2 ALBUMIN. DO YOU SEE THAT?

02:45PM 3 A. YES.

02:45PM 4 Q. AND DO YOU UNDERSTAND THAT THAT IS ALSO AN ASSAY THERANOS

02:45PM 5 RAN AT TIMES ON THE MODIFIED COMMERCIAL MACHINES?

02:46PM 6 A. YES.

02:46PM 7 Q. AND IF YOU COULD LOOK AT -- DO YOU UNDERSTAND THAT THAT

02:46PM 8 WAS AN ASSAY THAT THEY RAN?

02:46PM 9 A. ALBUMIN?

02:46PM 10 Q. YES.

02:46PM 11 A. AGAIN, I CAN'T REMEMBER. I DON'T REMEMBER ALL OF THE

02:46PM 12 NAMES FOR THE GENERAL CHEMISTRY. THAT WASN'T MY SPECIALTY AS

02:46PM 13 SUCH, AND IT WAS LATE WHEN I WAS IN THE COMPANY.

02:46PM 14 Q. FAIR ENOUGH. IF YOU COULD GO IN THE BINDER TO 9016.

02:46PM 15 A. CAN YOU REPEAT THAT NUMBER.

02:46PM 16 Q. 9016.

02:46PM 17 A. OKAY.

02:46PM 18 Q. DO YOU SEE 9016 IS A MODIFIED SIEMENS ASSAY OF ALBUMIN?

02:46PM 19 A. YES.

02:46PM 20 Q. OKAY. SO THAT'S ANOTHER ONE RUN ON A THERANOS MODIFIED

02:47PM 21 PREDICATE?

02:47PM 22 A. YES.

02:47PM 23 Q. OKAY. MS. CHEUNG, YOU WEREN'T INVOLVED, WERE YOU, IN ALL

02:47PM 24 OF THE RESEARCH AND DEVELOPMENT WORK THAT WENT INTO MODIFYING

02:47PM 25 THE COMMERCIAL MACHINES?

02:47PM 1 A. NO.

02:47PM 2 Q. SO I TAKE IT YOU DON'T REALLY KNOW WHAT THERANOS DID TO

02:47PM 3 MODIFY THE MACHINES?

02:47PM 4 A. IN WHAT CONTEXT? CAN YOU ELABORATE.

02:47PM 5 Q. WELL, SO WHEN YOU MODIFY SOMETHING, THAT MEANS YOU'RE

02:47PM 6 CHANGING IT; IS THAT FAIR?

02:47PM 7 A. CORRECT.

02:47PM 8 Q. AND YOU DON'T KNOW WHAT THE CHANGES WERE EXACTLY THAT THEY

02:47PM 9 MADE TO THE MODIFIED PREDICATES, DO YOU?

02:47PM 10 A. NO.

02:47PM 11 Q. SO, FOR EXAMPLE, IF THEY CHANGED THE SOFTWARE, YOU

02:47PM 12 WOULDN'T KNOW EXACTLY WHAT THEY DID?

02:47PM 13 A. I KNEW SOME OF THOSE PARTS BUT NOT ALL OF THEM.

02:47PM 14 Q. OKAY. AND THEY HAD TO MANUFACTURE THEIR OWN PARTS TO HOLD

02:47PM 15 SMALL BLOOD SAMPLES, YOU WEREN'T INVOLVED IN THE MANUFACTURING

02:47PM 16 OR DESIGN OF THOSE PARTS; RIGHT?

02:47PM 17 A. NO.

02:47PM 18 Q. BUT YOU KNEW THERE WERE SUCH PARTS?

02:47PM 19 A. YES.

02:47PM 20 Q. THEY WERE CALLED T-CUPS; RIGHT?

02:47PM 21 A. CORRECT.

02:47PM 22 Q. AND THAT WAS THERANOS'S TECHNOLOGY THAT THEY DEVELOPED?

02:48PM 23 A. CORRECT.

02:48PM 24 Q. AND THEN ANY OTHER CHANGES TO THE COMMERCIAL MACHINES THAT

02:48PM 25 WERE NECESSARY FOR THEM TO RUN SMALL BLOOD SAMPLES, YOU WEREN'T

02:48PM 1 INVOLVED IN MAKING THOSE CHANGES?

02:48PM 2 A. NO.

02:48PM 3 Q. AND SO YOU WOULD RUN SAMPLES SOMETIMES ON THOSE MODIFIED

02:48PM 4 PREDICATE MACHINES?

02:48PM 5 A. CORRECT.

02:48PM 6 Q. AND DO YOU KNOW WHY THEY'RE CALLED PREDICATES, BY THE WAY?

02:48PM 7 A. NO. I ASSUME THAT'S BECAUSE IT'S THE PRIOR METHOD.

02:48PM 8 Q. RIGHT. PRIOR METHOD MEANING THAT THERE'S A COMMERCIAL

02:48PM 9 MACHINE THAT IS APPROVED BY THE FDA?

02:48PM 10 A. CORRECT.

02:48PM 11 Q. AND THAT WOULD BE THE PREDICATE; RIGHT?

02:48PM 12 A. YEAH.

02:48PM 13 Q. AND THEN THE GOAL IS TO HAVE SOMETHING THAT YOU

02:48PM 14 MANUFACTURE YOURSELF OR MODIFIED TO BE EQUIVALENT TO THE

02:48PM 15 PREDICATE; CORRECT?

02:48PM 16 A. CORRECT.

02:48PM 17 Q. AND YOU TESTIFIED, I THINK, ON DIRECT ABOUT HOW CERTAIN

02:48PM 18 DEVICES WERE FDA APPROVED THAT THERANOS RAN?

02:48PM 19 A. CORRECT.

02:48PM 20 Q. AND SOME OF THEM WERE NOT APPROVED?

02:48PM 21 A. CORRECT.

02:48PM 22 Q. AND THE ONES THAT WERE NOT APPROVED, DO YOU UNDERSTAND

02:48PM 23 THAT THOSE WOULD SOMETIMES BE REFERRED TO AS LABORATORY

02:48PM 24 DEVELOPED TESTS?

02:48PM 25 A. CORRECT.

02:48PM 1 Q. AND THERE'S NOTHING WRONG WITH THAT; RIGHT?

02:48PM 2 A. OF HAVING LABORATORY DEVELOPED TESTS?

02:49PM 3 Q. RIGHT. DO YOU KNOW?

02:49PM 4 A. NO, THERE'S NOTHING WRONG WITH HAVING LABORATORY DEVELOPED

02:49PM 5 TESTS.

02:49PM 6 Q. OKAY. AND YOU UNDERSTOOD THAT THE TEAM AT THERANOS WAS

02:49PM 7 RUNNING LABORATORY DEVELOPED TESTS; RIGHT?

02:49PM 8 A. IN THE R&D LAB?

02:49PM 9 Q. IN THE CLIA LAB?

02:49PM 10 A. IN THE CLIA LAB? YES.

02:49PM 11 Q. AND THOSE WOULD BE THE MODIFIED PREDICATES?

02:49PM 12 A. YES.

02:49PM 13 Q. AND THE EDISON DEVICES?

02:49PM 14 A. CORRECT.

02:49PM 15 Q. OKAY. LET'S GO ON WITH OUR EXHIBIT 3741, AND WE'RE ON THE

02:49PM 16 FIRST PAGE. SO THE NEXT ONE IS ALKALINE PHOSPHATASE.

02:49PM 17 DO YOU SEE THAT?

02:49PM 18 A. YES.

02:49PM 19 Q. AND DO YOU RECOGNIZE THAT AS ANOTHER ASSAY THAT WAS RUN ON

02:49PM 20 ONE OF THESE MODIFIED COMMERCIAL MACHINES?

02:49PM 21 A. AGAIN, I COULDN'T BE CERTAIN.

02:49PM 22 Q. OKAY. CAN YOU REFER IN THE BINDER TO EXHIBIT 9020?

02:50PM 23 A. I'M THERE.

02:50PM 24 Q. AND DO YOU SEE THAT'S AN ASSAY DEVELOPMENT REPORT FOR THAT

02:50PM 25 ALKALINE PHOSPHATASE?

02:50PM 1 A. YES.

02:50PM 2 Q. OKAY. AND IF YOU WOULD GO TO THE NEXT ONE, ALPHA-1-ACID

02:50PM 3 GLYCOPROTEIN.

02:50PM 4 DO YOU SEE THAT?

02:50PM 5 A. YES.

02:50PM 6 Q. AND THAT'S ANOTHER ONE RUN ON A MODIFIED PREDICATE?

02:50PM 7 A. I DO NOT KNOW THAT FOR CERTAIN.

02:50PM 8 Q. OKAY. AND IF YOU GO TO EXHIBIT 9026 IN YOUR BINDER?

02:50PM 9 A. YES.

02:50PM 10 Q. YOU SEE THAT'S ANOTHER VALIDATION REPORT FOR ALPHA-1-ACID

02:50PM 11 GLYCOPROTEIN?

02:50PM 12 A. YES.

02:50PM 13 Q. AND IF THERE'S A VALIDATION REPORT, THAT TELLS YOU IT'S

02:50PM 14 SOMETHING RUN AT THERANOS; RIGHT?

02:50PM 15 A. YES.

02:50PM 16 Q. OKAY. IF WE GO DOWN TO THE NEXT ONE, THERE'S ONE FURTHER

02:51PM 17 DOWN IN THE A'S, AMYLASE.

02:51PM 18 DO YOU SEE THAT?

02:51PM 19 A. YES.

02:51PM 20 Q. AND DO YOU KNOW WHAT THAT IS?

02:51PM 21 A. NO.

02:51PM 22 Q. AND DO YOU UNDERSTAND THAT THAT'S ANOTHER ONE RUN ON A

02:51PM 23 MODIFIED PREDICATE?

02:51PM 24 A. AGAIN, I CAN'T BE CERTAIN.

02:51PM 25 Q. IF YOU GO TO EXHIBIT 9031 IN THE BINDER.

02:52PM 1 DO YOU SEE THAT'S AN LDT VALIDATION REPORT FOR AMYLASE,
02:52PM 2 THAT SAME SIEMENS ADVIA?
02:52PM 3 A. YES.
02:52PM 4 Q. SO THAT'S ANOTHER ONE RUN ON A MODIFIED SIEMENS MACHINE;
02:52PM 5 CORRECT?
02:52PM 6 A. YES.
02:52PM 7 Q. THE NEXT ONE DOWN IS APOLIPOPROTEIN A-1.
02:52PM 8 DO YOU SEE THAT?
02:52PM 9 A. YES.
02:52PM 10 Q. AND IF YOU GO TO EXHIBIT 9046 IN THE BINDER.
02:52PM 11 DO YOU SEE THAT'S ANOTHER ASSAY REPORT FOR THAT
02:52PM 12 APOLIPOPROTEIN A-1?
02:53PM 13 A. YES.
02:53PM 14 Q. AND SO THAT'S ANOTHER ONE RUN ON A MODIFIED SIEMENS
02:53PM 15 MACHINE? I'M SORRY?
02:53PM 16 A. DID -- CAN YOU REPEAT THE QUESTION.
02:53PM 17 Q. SURE.
02:53PM 18 SO THAT ONE THAT WE WERE JUST LOOKING AT WHICH WAS
02:53PM 19 APOLIPOPROTEIN A-1, AND THEN REFERRING TO EXHIBIT 9046 IN YOUR
02:53PM 20 BINDER, DO YOU SEE THAT THIS IS ANOTHER ASSAY THERANOS RAN ON A
02:53PM 21 MODIFIED PREDICATE MACHINE?
02:53PM 22 A. YEAH. IT JUST SAYS THE ASSAY VALIDATION REPORT. I DON'T
02:53PM 23 KNOW WHAT DEVICE IT WAS RUN ON. IT DOESN'T ARTICULATE THAT ON
02:53PM 24 HERE.
02:53PM 25 Q. OKAY. I SEE.

02:54PM 1 SO IF YOU GO TO PAGE 9 OF THAT DOCUMENT.

02:54PM 2 A. YES.

02:54PM 3 Q. AND YOU SEE SECTION 8, METHOD COMPARISON, SIEMENS VERSUS

02:54PM 4 THERANOS SYSTEM?

02:54PM 5 A. YES.

02:54PM 6 Q. AND THEN IT TALKS ABOUT THE ADVIA SYSTEM?

02:54PM 7 A. YES.

02:54PM 8 Q. AND SO DOES THAT HELP YOU?

02:54PM 9 A. YES.

02:54PM 10 Q. OKAY. SO THAT'S ANOTHER MODIFIED PREDICATE ASSAY; RIGHT?

02:54PM 11 A. YES.

02:54PM 12 Q. OKAY. THE NEXT ONE IS APOLIPOPROTEIN B, THE NEXT ONE

02:54PM 13 DOWN.

02:54PM 14 DO YOU SEE THAT?

02:54PM 15 A. YES.

02:54PM 16 Q. AND IF YOU GO TO EXHIBIT 9048.

02:54PM 17 DO YOU SEE THE VALIDATION REPORT FOR THAT ASSAY?

02:54PM 18 A. YES.

02:54PM 19 Q. AND THEN IF YOU GO TO PAGE 8 OF THAT DOCUMENT, DO YOU SEE

02:54PM 20 IN SECTION 8 THE REFERENCE TO THE ADVIA TESTIMONY?

02:54PM 21 A. YES.

02:55PM 22 Q. OKAY. SO, MS. CHEUNG, WHEN YOU WERE WORKING WITH THE

02:55PM 23 MODIFIED PREDICATE MACHINES, WHEN I SAY "WORKING WITH," RUNNING

02:55PM 24 SAMPLES ON THEM --

02:55PM 25 A. YES.

02:55PM 1 Q. -- YOU DIDN'T THINK YOU WERE DOING ANYTHING WRONG, DID
02:55PM 2 YOU?

02:55PM 3 A. NO.

02:55PM 4 Q. AND THE PEOPLE WHO WERE WORKING WITH YOU IN THE CLIA LAB,
02:55PM 5 YOU DIDN'T THINK THEY WERE DOING ANYTHING WRONG EITHER, DID
02:55PM 6 YOU?

02:55PM 7 A. I MEAN, IT JUST DEPENDS ON -- I DIDN'T INITIALLY WHEN
02:55PM 8 WORKING FOR THE COMPANY, BUT IT SORT OF CHANGED AS I LEARNED
02:55PM 9 MORE ABOUT WHAT WAS OCCURRING IN THE ORGANIZATION.

02:55PM 10 Q. OKAY. SO DID YOU THINK THAT DR. ROSENDORFF WAS DOING
02:55PM 11 SOMETHING WRONG?

02:55PM 12 A. NO. I DON'T THINK PEOPLE REALLY UNDERSTOOD THE FULL
02:55PM 13 CONTEXT FOR A LONG TIME OF WHAT WAS HAPPENING.

02:55PM 14 Q. DO YOU KNOW WHAT DR. ROSENDORFF UNDERSTOOD OR WHAT HE
02:55PM 15 DIDN'T UNDERSTAND?

02:55PM 16 A. NOT ENTIRELY, NO.

02:55PM 17 Q. OKAY. DO YOU THINK THAT DR. PANDORI WAS DOING SOMETHING
02:55PM 18 WRONG?

02:55PM 19 A. NO, I DON'T THINK HE --

02:55PM 20 Q. DR. SIVARAMAN?

02:55PM 21 A. I DON'T KNOW. I CAN'T SPEAK FOR HER.

02:55PM 22 Q. DR. YOUNG?

02:55PM 23 A. AGAIN, I DON'T KNOW. I CAN'T SPEAK FOR HIM.

02:56PM 24 Q. YOU DON'T KNOW ONE WAY OR THE OTHER?

02:56PM 25 A. NO.

02:56PM 1 Q. OKAY. AND DO YOU UNDERSTAND THAT ALL OF THOSE PEOPLE
02:56PM 2 WERE, THAT I'VE MENTIONED, WERE PEOPLE WITH M.D.'S AND PH.D.'S?
02:56PM 3 A. CORRECT.
02:56PM 4 Q. AND SO IF YOU DISAGREED WITH THEM ABOUT SOMETHING, YOU
02:56PM 5 WOULD BE DISAGREEING WITH PEOPLE WITH A LOT MORE EXPERIENCE
02:56PM 6 THAN YOURSELF?
02:56PM 7 A. YES.
02:56PM 8 Q. AND I DON'T SAY THAT OUR OR ANY -- I DON'T MEAN ANY
02:56PM 9 OFFENSE, BUT I JUST POINT THAT AS THE QUESTION.
02:56PM 10 A. YES.
02:56PM 11 MR. COOPERSMITH: OKAY. YOUR HONOR, WOULD THIS BE A
02:56PM 12 GOOD TIME TO BREAK FOR THE DAY?
02:56PM 13 THE COURT: I THINK SO IF YOU'RE MOVING INTO A NEW
02:56PM 14 AREA.
02:56PM 15 MR. COOPERSMITH: WELL, YOU KNOW, THERE ARE MORE OF
02:56PM 16 THESE, AND I'M GOING TO, OVER THE LONG BREAK THAT WE HAVE, COME
02:56PM 17 UP WITH A MORE EFFICIENT WAY SO WE DON'T TAKE AS MUCH TIME.
02:56PM 18 THE COURT: OKAY. LET'S DO THAT.
02:56PM 19 LADIES AND GENTLEMEN, LET'S RECESS FOR THE DAY. PLEASE
02:56PM 20 RECALL THAT THIS WILL BE A LONG WEEKEND FOR YOU. WE WILL BE
02:56PM 21 BACK IN SESSION ON WEDNESDAY NEXT WHICH IS THE 30TH AT
02:57PM 22 9:00 A.M. IF YOU COULD COLLECT YOURSELVES AS YOU HAVE BEEN
02:57PM 23 DOING. I HOPE THAT'S BEEN EFFICIENT FOR YOU.
02:57PM 24 LET ME REMIND YOU ONE MORE TIME OF THE ADMONITION, AND I'M
02:57PM 25 GOING TO SAY IT ONE MORE TIME WHEN WE BREAK, AND YOU KNOW THE

02:57PM 1 QUESTION I'M GOING TO ASK YOU.

02:57PM 2 PLEASE, DURING THIS BREAK, AND IT'S A LONG ONE, AND IT MAY
02:57PM 3 BE CHALLENGING, BUT YOU'VE BEEN DOING GREAT SO FAR, PLEASE DO
02:57PM 4 NOT DO ANY RESEARCH, DO NOT DO ANY READING, INDEPENDENT
02:57PM 5 RESEARCH, DO NOT DISCUSS, READ, LISTEN TO, OR ALLOW ANY OTHER
02:57PM 6 INFORMATION OUTSIDE OF THIS COURTROOM REGARDING THIS CASE TO
02:57PM 7 COME TO YOUR ATTENTION. PLEASE AVOID THAT AT ALL COSTS.

02:57PM 8 I WILL ASK YOU WHEN WE MEET AGAIN ON WEDNESDAY WHETHER OR
02:57PM 9 NOT YOU HAVE HAD EXPOSURE TO ANY OF THOSE SOURCES OF OUTSIDE
02:57PM 10 INFORMATION.

02:57PM 11 SO I APPRECIATE YOUR CONTINUED FIDELITY TO THAT
02:57PM 12 ADMONITION. SAFE TRAVELS. HAVE A GOOD TIME ON YOUR TRIP,
02:57PM 13 THOSE OF YOU WHO MIGHT BE TRAVELLING. ENJOY. BE SAFE.

02:58PM 14 WE WILL SEE YOU AGAIN NEXT WEEK.

02:58PM 15 ANYTHING, COUNSEL, BEFORE THE JURY LEAVES FOR THE WEEKEND?

02:58PM 16 MR. COOPERSMITH: NO, YOUR HONOR.

02:58PM 17 MR. BOSTIC: NO, YOUR HONOR.

02:58PM 18 THE COURT: ALL RIGHT. THANK YOU. ENJOY
02:58PM 19 YOURSELVES. THANK YOU. AND WE'LL SEE YOU NEXT WEDNESDAY.

02:58PM 20 MS. CHEUNG, PLEASE. THANK YOU.

02:58PM 21 (JURY OUT AT 2:58 P.M.)

02:58PM 22 THE COURT: PLEASE BE SEATED. THANK YOU.

02:58PM 23 ALL RIGHT. THE RECORD SHOULD REFLECT THAT OUR JURY HAS
02:59PM 24 LEFT FOR THE WEEKEND.

02:59PM 25 MS. CHEUNG, OUR WITNESS, HAS LEFT.

02:59PM 1 ALL COUNSEL AND MR. BALWANI ARE PRESENT.

02:59PM 2 ANYTHING WE SHOULD DISCUSS BEFORE WE LEAVE?

02:59PM 3 MR. SCHENK: YES, YOUR HONOR, THERE ARE A COUPLE OF
02:59PM 4 ISSUES. I SAID TWO THIS MORNING AND NOW THERE ARE ACTUALLY
02:59PM 5 FOUR, BUT I CAN BE VERY QUICK.

02:59PM 6 THE FIRST, WE SHOULD CLARIFY.

02:59PM 7 MR. COOPERSMITH HAS ON SEVERAL OCCASIONS REFERRED TO A
02:59PM 8 STIPULATION BETWEEN THE PARTIES. IT IS DOCKET 1354. THE
02:59PM 9 ASPECTS OF THE STIPULATION ARE NUMBERED.

02:59PM 10 THE SECOND ONE, WHICH IS THE ONE THAT MR. COOPERSMITH MUST
02:59PM 11 BE REFERRING TO THAT LISTS OUT BATES NUMBERS BEGINS BY SAYING,
02:59PM 12 EMAILS TO OR FROM EMAIL ADDRESSES WITH A DOMAIN NAME, AND THEN
02:59PM 13 LISTS THE DOMAIN NAME AT THERANOS AND THEN CERTAIN BATES
03:00PM 14 NUMBERS.

03:00PM 15 SO THE DOCUMENT LIKE THE ADVIA USER NUMBER IS NOT AN
03:00PM 16 EMAIL, AND IT IS NOT COVERED BY THE STIPULATION. ITS
03:00PM 17 AUTHENTICITY WOULD STILL NEED TO BE ESTABLISHED THROUGH WITNESS
03:00PM 18 TESTIMONY. I WANT TO CLARIFY THAT THIS EARLY ON IN THE TRIAL.

03:00PM 19 THE COURT: THANK YOU. ANY COMMENT ON THAT?

03:00PM 20 MR. COOPERSMITH: YOUR HONOR, IF THAT'S THE
03:00PM 21 STIPULATION AND I CONFUSED EMAILS WITH OTHER DOCUMENTS, THEN MY
03:00PM 22 APOLOGIES.

03:00PM 23 I WILL SAY THAT IT'S ASTOUNDING REALLY. THE WHOLE PURPOSE
03:00PM 24 OF THE STIPULATION, AS I UNDERSTOOD IT, WAS THAT THESE WERE
03:00PM 25 DOCUMENTS THAT THE GOVERNMENT OBTAINED FROM THERANOS. SO THERE

03:00PM 1 REALLY IS NO DEBATE ABOUT THAT. SO I'M NOT REALLY SURE WHY
03:00PM 2 THOSE WOULDN'T BE ADMISSIBLE BECAUSE THEY'RE CLEARLY PRODUCED
03:00PM 3 BY THERANOS. THE GOVERNMENT KNOWS THAT. THEY OBTAINED THEM.

03:00PM 4 THE COURT: ARE THEY IN THE STIPULATION?

03:00PM 5 MR. COOPERSMITH: WELL, APPARENTLY NOT, YOUR HONOR.
03:00PM 6 APPARENTLY NOT, BECAUSE THEY'RE NOT EMAILS. SO I STAND
03:00PM 7 CORRECTED ON THAT ONE, YES.

03:00PM 8 THE COURT: OKAY. AND YOU HAD ANOTHER -- THANK YOU
03:00PM 9 FOR RAISING IT.

03:00PM 10 MR. SCHENK: THE SECOND THING, MR. COOPERSMITH, I
03:00PM 11 THINK, USED A TRANSCRIPT FROM THE ELIZABETH HOLMES TRIAL TO
03:01PM 12 REFRESH ERIKA CHEUNG, THAT YOUR HONOR ADMITTED AN EXHIBIT IN
03:01PM 13 THE HOLMES TRIAL.

03:01PM 14 IT IS NOT AN APPROPRIATE WAY TO REFRESH THE RECOLLECTION
03:01PM 15 OF THIS WITNESS. IN FACT, FRANKLY, I THINK IT WAS MORE OF AN
03:01PM 16 EFFORT TO REFRESH YOUR HONOR'S MEMORY THAT YOUR HONOR
03:01PM 17 PREVIOUSLY ADMITTED A CERTAIN EXHIBIT, AND I THINK WE JUST NEED
03:01PM 18 CLARIFICATION EARLY ON IN THE TRIAL: ARE WE GOING TO ADMIT
03:01PM 19 EXHIBITS OR IS THE DEFENSE GOING TO SAY ESSENTIALLY LAW OF THE
03:01PM 20 CASE, JUDGE. YOU ADMITTED THIS EXHIBIT IN THE PRIOR TRIAL AND
03:01PM 21 SO IT COMES IN IN THIS TRIAL, BECAUSE WE'RE CERTAINLY GOING TO
03:01PM 22 WANT TO ADMIT EXHIBITS ON THE SAME LATER.

03:01PM 23 THE COURT: SURE. I UNDERSTAND. THAT'S WHY THERE
03:01PM 24 WAS A DELAY WHEN YOU WERE TRYING TO ADMIT THAT EXHIBIT. I WAS
03:01PM 25 CONFUSED WHAT YOU WERE ACTUALLY TRYING TO DO, WHETHER OR NOT

03:01PM 1 YOU WERE USING THE TRANSCRIPT TO REFRESH HER RECOLLECTION, OR
03:01PM 2 WHETHER -- I THINK WHAT YOU TOLD ME WAS, WELL, LET ME REFER YOU
03:01PM 3 TO THE TRANSCRIPT. MAYBE THAT WILL HELP THE COURT.

03:02PM 4 AND WERE YOU TRYING TO SAY YOU ADMITTED IT BEFORE, TO
03:02PM 5 MR. SCHENK'S POINT, SO WHY DON'T WE ADMIT IT HERE.

03:02PM 6 IF THAT WAS YOUR ATTEMPT -- IS THAT WHAT YOU WERE TRYING
03:02PM 7 TO DO HERE?

03:02PM 8 MR. COOPERSMITH: RIGHT, YOUR HONOR.

03:02PM 9 AND OBVIOUSLY I DIDN'T WANT TO SAY IN FRONT OF THE JURY
03:02PM 10 THAT YOUR HONOR MADE A PREVIOUSLY RULING OR SOMETHING LIKE
03:02PM 11 THAT. I DON'T THINK THAT WOULD BE APPROPRIATE.

03:02PM 12 SO I WAS JUST TRYING TO, BECAUSE YOUR HONOR HAD IT IN
03:02PM 13 FRONT OF YOU.

03:02PM 14 AND, NO, IT'S NOT LAW OF THE CASE. AND, OF COURSE, I DO
03:02PM 15 RECOGNIZE THAT THE COURT, AS WE DISCUSSED BEFORE IN OTHER
03:02PM 16 CONTEXTS, THE COURT COULD MAKE DIFFERENT RULINGS, BUT I DO
03:02PM 17 THINK IT IS RELEVANT THAT WHEN THE GOVERNMENT MAKES EXACTLY THE
03:02PM 18 SAME OBJECTION. I ASSUMED IT WOULD BE HELPFUL FOR THE COURT TO
03:02PM 19 KNOW HOW YOUR HONOR PREVIOUSLY RULED ON EXACTLY THE SAME ISSUE.
03:02PM 20 EVEN IF YOU'RE NOT BOUND BY IT, IT STILL SEEMS HELPFUL TO KNOW
03:02PM 21 THAT, AND THAT'S WHAT I WAS TRYING TO DO, RIGHT?

03:02PM 22 THE COURT: OKAY. ALL RIGHT. WELL, IF WE'RE GOING
03:02PM 23 TO HAVE DUAL TRACKS, LET ME KNOW, AND I'LL PULL UP THE
03:02PM 24 TRANSCRIPTS FROM THE OTHER TRIAL SO I CAN HAVE THEM TO
03:03PM 25 REFERENCE.

03:03PM 1 I SAY THAT TONGUE AND CHEEK BECAUSE WE'RE NOT GOING TO DO
03:03PM 2 THAT. WE'RE NOT GOING TO DO THAT.

03:03PM 3 YOUR CLIENT IS ENTITLED TO HIS OWN FAIR AND INDEPENDENT
03:03PM 4 TRIAL, AND I APPRECIATE THAT WE ALL RECOGNIZE THE DECISIONS
03:03PM 5 THAT WERE MADE IN THE PREVIOUS CASE WERE UNIQUE TO THAT CASE
03:03PM 6 AND CIRCUMSTANCES. WE'RE PROBABLY GOING TO TALK ABOUT ANOTHER
03:03PM 7 PIECE OF EVIDENCE HERE IN JUST A MOMENT ABOUT THAT.

03:03PM 8 BUT I APPRECIATE -- I THINK I ADMITTED THAT DOCUMENT IN
03:03PM 9 FOR THE PURPOSE, AND THAT'S FINE.

03:03PM 10 BUT I THINK THERE WAS SOME CONFUSION ABOUT WHAT ARE YOU --
03:03PM 11 WHY WERE YOU REFERRING TO THE TRANSCRIPT? WAS THIS TO REFRESH
03:03PM 12 HER RECOLLECTION, OR WERE YOU TRYING TO BASICALLY SAY, JUDGE,
03:03PM 13 YOU DID IT BEFORE SO DO IT AGAIN.

03:03PM 14 IT SEEMS LIKE THAT'S WHAT MR. SCHENK'S POINT IS.

03:03PM 15 OKAY. THANK YOU FOR RAISING THAT. I APPRECIATE THAT.

03:03PM 16 MR. SCHENK: YES. TWO OTHERS, AND I'LL BE VERY
03:03PM 17 QUICK.

03:03PM 18 THE DEFENSE ADDED DURING MR. BOSTIC'S DIRECT ONE RULE 106
03:03PM 19 ADDITION TO A DOCUMENT WHILE MS. CHEUNG WAS ON THE STAND.

03:04PM 20 YOUR HONOR HAS ASKED FOR THE PARTIES, FOR THE GOVERNMENT
03:04PM 21 BEFORE IT PUTS A WITNESS ON TO PROVIDE EXHIBITS TO THE DEFENSE,
03:04PM 22 AND PART OF OUR UNDERSTANDING OF WHY WE DO THAT IS TO MAXIMIZE
03:04PM 23 EFFICIENCY SO WE DON'T HAVE TO EXCUSE THE JURY AND HANDLE
03:04PM 24 ISSUES.

03:04PM 25 AND I WANT TO BE CLEAR THAT I'M SEPARATING OUT THE KIND OF

03:04PM 1 RULE 106 OBJECTION THAT THE DEFENSE MADE FROM HEARSAY
03:04PM 2 OBJECTIONS.

03:04PM 3 WE SENT THEM A LIST OF EXHIBITS. THEY DON'T KNOW EXACTLY
03:04PM 4 THE QUESTIONS THAT WE'RE GOING TO ASK TO LEAD UP TO ADMIT A
03:04PM 5 DOCUMENT. SO TO, IN THE MOMENT, MAKE A HEARSAY OBJECTION IS
03:04PM 6 COMPLETELY APPROPRIATE, AND I'M NOT CONCERNED ABOUT THAT
03:04PM 7 QUESTIONING OR AFFECTING EFFICIENCY.

03:04PM 8 BUT RULE 106 ADDITIONS, WHEN WE GAVE A LIST OF 26 EXHIBITS
03:04PM 9 FOR ERIKA CHEUNG ON MARCH 15TH, MORE THAN A WEEK AGO, WE SENT
03:04PM 10 26 EXHIBIT NUMBERS TO THEM.

03:04PM 11 THE COURT KNOWS THE NIGHT BEFORE THEY THOUGHT MS. CHEUNG
03:04PM 12 WAS GOING TO TESTIFY, THEY SOUGHT A MOTION TO EXCLUDE A
03:05PM 13 DOCUMENT, AND NOW THEY'RE MAKING RULE 106 ADDITIONS IN THE
03:05PM 14 MOMENT.

03:05PM 15 AND I THINK IF THAT CONTINUES, THE GOVERNMENT IS GOING TO
03:05PM 16 ASK THE COURT TO ALLEVIATE OUR OBLIGATIONS TO PROVIDE EXHIBITS
03:05PM 17 THE NIGHT BEFORE BECAUSE IT DOESN'T BENEFIT THE EFFICIENCY OF
03:05PM 18 THE PROCESS.

03:05PM 19 IF WHAT WE LOSE IS THE OPPORTUNITY TO MEET AND CONFER OVER
03:05PM 20 106 ADDITIONS, WE'RE LOSING THE BENEFIT, WE REALLY ARE, AT
03:05PM 21 LEAST FROM OUR PERSPECTIVE. THE SPIRIT OF PROVIDING EXHIBIT
03:05PM 22 NUMBERS IN ADVANCE IS SO WE DON'T HAVE TO EXCUSE THE JURY.

03:05PM 23 THE COURT: THANK YOU. THIS WAS A QUESTION THAT I
03:05PM 24 HAD. I GUESS I DON'T UNDERSTAND WHY WE'RE DOING 106 DURING THE
03:05PM 25 TRIAL.

03:05PM 1 I THOUGHT THAT WAS THE PURPOSE OF PRE-TESTIMONIAL,
03:05PM 2 PRE-WITNESS TESTIMONY, AND REVIEW, AND MEET AND CONFER AND THAT
03:05PM 3 WAS THE PURPOSE OF THE COURT MAKING ITSELF AVAILABLE PRIOR TO
03:05PM 4 THE START OF THE TRIAL TO RESOLVE THESE ISSUES. I THINK TODAY
03:05PM 5 WE HAD TO EXCUSE THE JURY FOR A NUMBER OF MINUTES TO HAVE A
03:05PM 6 DISCUSSION.

03:05PM 7 AND I REALIZE THAT WE'RE EARLY IN THE TRIAL, SO I THINK
03:05PM 8 IT'S GOOD THAT WE'RE TALKING ABOUT THESE TYPES OF HOUSEKEEPING
03:06PM 9 MEASURES NOW.

03:06PM 10 MR. COOPERSMITH: SURE, YOUR HONOR.

03:06PM 11 SO I DON'T DISAGREE WITH MR. SCHENK. I THINK THE GOAL IS,
03:06PM 12 AND WE WILL CERTAINLY ENDEAVOR EVERY CHANCE WE HAVE, WHEN WE
03:06PM 13 GET EXHIBITS IN ADVANCE, WE WILL TRY TO -- IF WE HAVE 106
03:06PM 14 ADDITIONS AND ANY OTHER ISSUES TO MEET AND CONFER WITH THE
03:06PM 15 GOVERNMENT, WE ARE ABLE TO DO THAT, AND WE HAVE DONE THAT
03:06PM 16 BEFORE, AND WE WILL DO THAT AGAIN. THAT'S NOT AN ISSUE.

03:06PM 17 I DON'T REALLY PLAN TO MAKE 106 OBJECTIONS FOR THE MOST
03:06PM 18 PART.

03:06PM 19 THAT PARTICULAR ONE, YOUR HONOR, JUST TO TELL YOU, THESE
03:06PM 20 WERE ALL GOVERNMENT EXHIBITS. IT WAS EXHIBIT I THINK 1287,
03:06PM 21 1288, AND 1289, AND THE GOVERNMENT WANTED 1287 AND 1289. THEY
03:06PM 22 OBVIOUSLY KNOW ABOUT 1288.

03:06PM 23 IT OCCURRED TO ME IN THE MOMENT THAT I THOUGHT IT WAS --
03:06PM 24 IN FAIRNESS 1288 OUGHT TO BE CONSIDERED, AND SO I RAISED IT.

03:06PM 25 IT WAS NOT MY INTENTION TO WASTE THE COURT'S TIME OR THE

03:06PM 1 JURY'S TIME.

03:06PM 2 THAT'S NOT A PLAN THAT I HAVE TO BRING THIS UP AND HAVE
03:07PM 3 THE JURY SENT OUT. IT'S NOT REALLY WHAT I WANT TO HAVE HAPPEN.

03:07PM 4 BUT THAT DID OCCUR TO ME, AND I GUESS MY CHOICE WAS TO
03:07PM 5 STAND MOOT WHEN I THOUGHT UNFAIRNESS WAS HAPPENING OR TO SPEAK
03:07PM 6 UP, WHICH I ELECTED TO DO.

03:07PM 7 THE COURT: WELL, THE SOLUTION WAS AN ELEGANT ONE,
03:07PM 8 WASN'T IT? 1287 WAS SUBSTITUTED, AND THAT SEEMED THAT THAT
03:07PM 9 TOOK CARE OF THE SITUATION.

03:07PM 10 MR. COOPERSMITH: IT DIDN'T, YOUR HONOR.

03:07PM 11 I MEAN, OUR POSITION WAS 1288 HAD OTHER MATERIAL THAT 1287
03:07PM 12 DID NOT HAVE. SO I SAID IN THE MOMENT, AND I'LL SAY AGAIN, IT
03:07PM 13 DID NOT SOLVE THE PROBLEM, AND THAT'S WHY WE RAISED IT.

03:07PM 14 BUT TO MR. SCHENK'S POINT, YOUR HONOR, IT IS OUR INTENTION
03:07PM 15 TO RAISE 106 ISSUES AS THEY COME UP THE NIGHT BEFORE CERTAINLY
03:07PM 16 IF WE'RE ABLE TO.

03:07PM 17 IF WE GET A DUMP OF 100 DOCUMENTS THE NIGHT BEFORE IT
03:07PM 18 BECOMES TOUGHER, BUT WE'RE GOING TO DO OUR BEST TO MAKE SURE WE
03:07PM 19 MEET AND CONFER AND STREAMLINE THE PROCESS.

03:07PM 20 THE COURT: OKAY. THANK YOU.

03:07PM 21 MR. SCHENK.

03:07PM 22 MR. SCHENK: AND THEN THE LAST ISSUE, THE COURT I
03:07PM 23 THINK IS GOING TO BE ASKED TO GRAPPLE WITH HOW MUCH THE DOOR
03:07PM 24 WAS OPENED BECAUSE OF THE OPENING ON THE LIS ISSUE.

03:08PM 25 AND I KNOW ONE THING THAT THE COURT IS GOING TO HAVE TO

03:08PM 1 WRESTLE WITH IS THE DEFENSE'S BELIEF THAT THEY WERE ALLOWED TO
03:08PM 2 ATTACK AND ASK THE JURY TO QUESTION THE GOVERNMENT'S
03:08PM 3 INVESTIGATION HERE, AND THAT FAILURE TO GET THE LIS FITS WITHIN
03:08PM 4 LEGITIMATE BOUNDS OF ATTACKING THE GOVERNMENT'S INVESTIGATION.

03:08PM 5 AND I WANT TO POINT TO THE COURT TO AN ARGUMENT THAT THE
03:08PM 6 DEFENSE MADE YESTERDAY IN ITS OPENING BECAUSE I THINK IT
03:08PM 7 HIGHLIGHTS THIS ISSUE, AND IT IS -- I'M NOT ASKING THE COURT
03:08PM 8 FOR A RULING ON THIS ISSUE NOW, BUT I WANT TO DO IT WHILE IT'S
03:08PM 9 FRESH IN OUR MINDS.

03:08PM 10 AT THE SAME TIME THE DEFENSE WAS, IN OPENING, ARGUING TO
03:08PM 11 THE JURY THAT THE GOVERNMENT FAILED TO GET LIS, THE DEFENSE
03:08PM 12 TOLD THE JURY BOTH IN THE TRANSCRIPT, AND I'LL READ A PORTION
03:08PM 13 OF IT, AND ALSO ON A SLIDE -- I DON'T HAVE A COPY OF THE SLIDE,
03:08PM 14 BUT I CAN EXPLAIN MY MEMORY OF IT -- THAT THE GOVERNMENT
03:08PM 15 INDICTED THE CASE WITHOUT HAVING THE LIS.

03:08PM 16 THERE WAS A BOX ON A SLIDE. THEY DIDN'T USE THE WORD
03:08PM 17 "GOVERNMENT INDICTED THE CASE."

03:08PM 18 AND IN THE TRANSCRIPT IT'S ON PAGE 1108. THEY SAY, AND
03:09PM 19 THIS IS LINE 9, "AND THEN TEN DAYS AFTER THAT THEY INDICTED
03:09PM 20 SUNNY BALWANI."

03:09PM 21 THE DEFENSE KNOWS A GRAND JURY INDICTED THE CASE, AND IF
03:09PM 22 THEY ARE GOING TO ATTACK THE GOVERNMENT'S INVESTIGATION AND SAY
03:09PM 23 THAT THE GOVERNMENT THEN WENT OUT AND MADE DECISIONS, TOOK
03:09PM 24 ACTIONS WITHOUT ENOUGH EVIDENCE, AND ONE OF THE ARGUMENTS THAT
03:09PM 25 THEY MADE TO THE JURY WAS FACTUALLY WRONG. A GRAND JURY

03:09PM 1 INDICTED THE CASE. A GRAND JURY, BY THE PROBABLE CAUSE
03:09PM 2 STANDARD, THE EVIDENCE THAT IT WAS PRESENTED, MADE A DECISION.
03:09PM 3 AND THAT'S WHY THE ISSUE HERE IS SO CRYSTALLIZED.

03:09PM 4 THE DEFENSE WANTS THE COURT AND THE JURY, WANTS LATITUDE
03:09PM 5 FROM THE COURT AND WANTS THE JURY TO BELIEVE THAT THE
03:09PM 6 GOVERNMENT'S INVESTIGATION IS FAIR GAME TO ATTACK BY ITS
03:09PM 7 FAILURE TO GET LIS. AND THE WAY THEY SHOEHORN IT IN IS BY
03:09PM 8 CLAIMING THAT THE GOVERNMENT WENT OUT AND CHARGED MR. BALWANI
03:10PM 9 WITHOUT THE LIS.

03:10PM 10 BUT THE TRUTH IS THAT THE GRAND JURY CHARGED.

03:10PM 11 ORDINARILY, WE DON'T TELL THE TRIAL JURY THAT A GRAND JURY
03:10PM 12 INDICTED THE CASE, THAT THEY MET, THAT THEY CONSIDERED
03:10PM 13 EVIDENCE, AND THAT THEY FOUND BY A PROBABLE CAUSE STANDARD.

03:10PM 14 I'M CONCERNED, THOUGH, THAT WE HAVE TO CORRECT WHAT THE
03:10PM 15 DEFENSE TOLD THE JURY IN THIS CASE BECAUSE IT'S FACTUALLY WRONG
03:10PM 16 AND BECAUSE IT'S SO AT THE HEART OF WHAT MAKES THE LIS ISSUE,
03:10PM 17 IN THE DEFENSE'S MIND, RELEVANT AND FAIR GAME.

03:10PM 18 AND I WANT TO POINT THAT OUT TO THE COURT WHILE IT'S STILL
03:10PM 19 FRESH IN OUR MINDS AND WHILE WE HAVE AN OPPORTUNITY TO THINK OF
03:10PM 20 WHAT THE PROPER SOLUTION IS.

03:10PM 21 IF IT'S A CURATIVE INSTRUCTION, WE'RE HAPPY TO WORK ON
03:10PM 22 THAT. IF IT HELPS CRYSTALLIZE HOW WIDE THE DOOR IS OPENED,
03:10PM 23 WE'RE HAPPY TO HAVE OUR THOUGHTS ON THAT.

03:10PM 24 THE COURT: THANK YOU.

03:10PM 25 MR. COOPERSMITH: YOUR HONOR, A COUPLE OF THOUGHTS

03:10PM 1 COME TO MY MIND, ALTHOUGH I'M JUST GETTING THIS ISSUE RIGHT NOW
03:10PM 2 AT THE MOMENT.

03:10PM 3 SO IT IS TRUE, OF COURSE, THAT THE GOVERNMENT PRESENTED AN
03:10PM 4 INDICTMENT TO THE GRAND JURY, WHICH THEN WOULD HAVE HAD TO
03:10PM 5 VOTE.

03:11PM 6 BUT CLEARLY THE GOVERNMENT ADVOCATED FOR THAT, AND THAT'S
03:11PM 7 WHAT THEY WANT TO HAVE HAPPEN. I'M NOT SURE THIS DISTINCTION
03:11PM 8 THAT MR. SCHENK IS MAKING IS SOMETHING THAT THE JURORS WOULD
03:11PM 9 GRASP OR EVEN --

03:11PM 10 THE COURT: WHEN IT'S PUT IN THE CONTEXT OF YOUR
03:11PM 11 COLLEAGUE'S STATEMENT, AND THERE WERE SEVERAL PAGES REGARDING
03:11PM 12 THE LIS. AND WE'VE LITIGATED THE LIS. WE'VE TALKED ABOUT
03:11PM 13 THAT. WE KNOW IT WAS GOING TO BE, IT WAS GOING TO BE AN ISSUE.

03:11PM 14 12:48 P.M. IS WHEN YOUR COLLEAGUE DISCUSSED THE LIS, AND
03:11PM 15 HE WENT ON THROUGH 12:51 AND SUBSEQUENT TO THAT. IT MIGHT HAVE
03:11PM 16 BEEN 12:56 WHEN HE FINISHED TALKING ABOUT THE LIS ACCORDING TO
03:11PM 17 MY NOTES. SO THERE WAS FIVE OR SEVEN MINUTES OF A
03:11PM 18 CONVERSATION, INCLUDING THE SLIDES.

03:11PM 19 SO I THINK CONTEXTUALLY WHEN YOU LOOK AT THAT, YOU'RE
03:11PM 20 ABSOLUTELY RIGHT, WE CAN SEPARATE, WELL, THE GOVERNMENT IS THE
03:11PM 21 ONE. NOBODY ELSE -- SOMEONE OFF THE STREET CAN'T GO IN AND ASK
03:12PM 22 A GRAND JURY TO DO SOMETHING. ONLY THE GOVERNMENT HAS PURVIEW
03:12PM 23 IN THAT REGARD, SO THAT'S A NATURAL THING.

03:12PM 24 OKAY. THAT, STANDING ALONE, MIGHT NOT BE A PROBLEM.

03:12PM 25 BUT I THINK WHAT MR. SCHENK IS SAYING, AND WHAT I HAVE

03:12PM 1 SOME CONCERN ABOUT, CANDIDLY, IS WHEN THOSE TWO ITEMS ARE
03:12PM 2 LINKED, THAT DOES CREATE A PERCEPTION THAT IS NOT A CORRECT ONE
03:12PM 3 IN THE CONTEXT OF THE GOVERNMENT DOESN'T GO AND GET AN
03:12PM 4 INDICTMENT. THE GRAND JURY DOES.

03:12PM 5 NOW, IN MY PRELIMINARY INSTRUCTIONS, I BELIEVE I READ THE
03:12PM 6 INDICTMENT AND IT SAYS "THE GRAND JURY." I DON'T THINK I READ
03:12PM 7 THE INDICTMENT PER SE, WHICH WE KNOW STARTS OFF WITH THE GRAND
03:12PM 8 JURY AS THE PREDICATE START OF AN INDICTMENT. I DON'T THINK
03:12PM 9 THEY KNOW THAT.

03:12PM 10 BUT THE CONTEXT OF THIS LIS I THINK IS A SERIOUS ISSUE IN
03:12PM 11 THIS CASE THAT HAS NOW PRESENTED ITSELF. AND WE ARE GOING TO,
03:12PM 12 ALL OF US, COLLECTIVELY ARE GOING TO HAVE TO THINK ABOUT WHAT
03:13PM 13 IS FAIR FOR BOTH SIDES IN THIS CASE NOW THAT THAT'S OUT THERE
03:13PM 14 AND THAT IT HAS BEEN PRESENTED IN THE WAY THAT IT HAS.

03:13PM 15 IF I LOOK AT MY NOTES -- AND IF YOU LOOKED AT MY NOTEPAD,
03:13PM 16 YOU WOULD SEE THE WORD IS THIS AN INVITATION? ARE YOU INVITING
03:13PM 17 COMMENT ON THIS? IT JUST SEEMS THAT THAT'S WHAT YOU WERE
03:13PM 18 DOING.

03:13PM 19 NOW, LET ME SAY, CRITICISM OF THE GOVERNMENT'S CASE IS
03:13PM 20 FAIR GAME. OBVIOUSLY YOU CAN CRITICIZE THAT THEY'RE NOT GOING
03:13PM 21 TO MEET THEIR BURDEN OF PROOF, THAT THERE'S GOING TO BE A
03:13PM 22 FAILURE OF PROOF AS TO THIS CASE. THAT IS FAIR GAME, AND THE
03:13PM 23 DEFENSE CAN ALWAYS, ALWAYS CRITICIZE THE EVIDENCE IN THE CASE.
03:13PM 24 THAT IS PART OF THE TRIAL PROCESS. WE KNOW THAT.

03:13PM 25 BUT TO RAISE IT IN THE CONTEXT, AS WE ALL KNOW AND THE

03:13PM 1 JURY DOESN'T, THE CIRCUMSTANCES OF THE LIS AND WHY IT'S NOT
03:13PM 2 AVAILABLE, THE COMPLETE STORY SHALL I SAY, ABOUT THE LIS THAT
03:13PM 3 WE ALL KNOW ABOUT, PART OF THAT WAS DISCUSSED IN THE OTHER
03:14PM 4 TRIAL, BUT MUCH OF IT WASN'T FOR A VARIETY OF REASONS.

03:14PM 5 BUT WE KNOW, WE KNOW WHAT THAT TRANSCRIPT IS. AND I THINK
03:14PM 6 THE STRUGGLE WE'RE ALL GOING TO HAVE IS HOW MUCH OF THAT STORY
03:14PM 7 COMES IN, IF ANY, INTO THIS TRIAL.

03:14PM 8 MR. COOPERSMITH: YES, YOUR HONOR, I THINK THAT IS
03:14PM 9 FAIR COMMENT.

03:14PM 10 FROM THE DEFENSE STANDPOINT WE ARE SAYING, YES, THE
03:14PM 11 GOVERNMENT DOES NOT HAVE SUFFICIENT EVIDENCE TO PROVE THEIR
03:14PM 12 CASE.

03:14PM 13 THE COURT: SURE.

03:14PM 14 MR. COOPERSMITH: WE ALSO ARE SAYING, AND I THINK --
03:14PM 15 I DON'T HAVE THE CITE OFF THE TOP OF MY HEAD, BUT THE COURT
03:14PM 16 MADE A PREVIOUS RULING IN THE OTHER CASE THAT WE ARE
03:14PM 17 PERMITTED -- AND I DON'T THINK MR. SCHENK WAS DISAGREEING WITH
03:14PM 18 THIS AS I UNDERSTOOD HIS COMMENTS -- WE CAN ALSO ATTACK THE
03:14PM 19 ADEQUACY OF THE INVESTIGATION. WE CAN TALK ABOUT THE
03:14PM 20 SLOPPINESS OF THE INVESTIGATION IF WE WANT TO PRESENT EVIDENCE
03:14PM 21 ON THAT, THAT I ALSO THINK IS FAIR GAME.

03:14PM 22 NOW, AS I SAID YESTERDAY, YOUR HONOR, IT DOES OPEN THE
03:14PM 23 DOOR TO SOMETHING. AND IF THE GOVERNMENT WANTS TO ARGUE THAT
03:14PM 24 OR PUT ON EVIDENCE THAT ACTUALLY IT WAS THERANOS THAT WAS
03:15PM 25 RESPONSIBLE, OR SOMETHING LIKE THAT, OR THEIR LAW FIRM, THEY

03:15PM 1 CAN DO THAT.

03:15PM 2 BUT THAT'S DIFFERENT FROM, YOU KNOW, TRYING TO SAY IT'S
03:15PM 3 MR. BALWANI'S FAULT, AND WE TALKED ABOUT THOSE ISSUES. THIS
03:15PM 4 MIGHT NOT BE THE TIME RIGHT THIS SECOND TO HEAR THAT OUT.

03:15PM 5 THE COURT: WELL, WE ALL KNOW, WE ALL KNOW AT LEAST
03:15PM 6 -- I THINK THERE'S INFORMATION THAT I BELIEVE EVERYBODY HAS AS
03:15PM 7 TO THE LIS, AND I'M NOT TRYING TO ASK YOU TO THINK CREATIVELY,
03:15PM 8 BUT JUST THINK ABOUT THE GENESIS OF THE LIS, LET ME PUT IT THAT
03:15PM 9 WAY.

03:15PM 10 WE KNOW THE CIRCUMSTANCES OF THE LIS. IF WE'RE GOING TO
03:15PM 11 TALK ABOUT THE LIS, AND WHAT WAS THE EVOLUTION OF THE LIS, AND
03:15PM 12 FROM WHENCE DID IT COME, AND HOW DID IT MEET ITS DEMISE, YOU
03:15PM 13 KNOW, THERE'S A FULSOME STORY THERE, YOU KNOW, THAT THIS DOOR
03:15PM 14 THAT WE HAVE TALKED ABOUT BEING OPENED.

03:15PM 15 YOU KNOW, LEWIS CARROLL WROTE ABOUT A SMALL LITTLE DOOR
03:15PM 16 AND A LITTLE GIRL GOING THROUGH THE DOOR THAT OPENED A VERY,
03:16PM 17 VERY UNIQUE ENVIRONMENT. AND I'M NOT LEWIS CARROLL, AND
03:16PM 18 NEITHER ARE YOU.

03:16PM 19 BUT I JUST TELL YOU THERE IS A DOOR THAT HAS BEEN OPENED,
03:16PM 20 AND I THINK OUR CONVERSATIONS ARE GOING TO, IN THE FUTURE, ARE
03:16PM 21 GOING TO DETERMINE WHAT IS THE RESULT OF THAT.

03:16PM 22 SO I'M COGNIZANT OF THIS.

03:16PM 23 AND MR. SCHENK'S POINT, LET ME JUST SAY, I THINK HIS POINT
03:16PM 24 IS WELL RAISED, WELL RAISED ABOUT THE CONTEXT OF THE OPENING
03:16PM 25 STATEMENT FROM YOUR COLLEAGUE YESTERDAY AND THE POINTS THAT IT

03:16PM 1 DOES RAISE.

03:16PM 2 I'M NOT BEING CRITICAL OF THE STATEMENT AT ALL. I'M JUST
03:16PM 3 SAYING THAT THE LANDSCAPE HAS SHIFTED A LITTLE BIT AS TO THAT,
03:16PM 4 AND I THINK IT DRAWS OUR ATTENTION.

03:16PM 5 MR. COOPERSMITH: YOUR HONOR, I UNDERSTAND.

03:16PM 6 THE POINT MR. SCHENK IS SPECIFICALLY RAISING, THOUGH, AS I
03:16PM 7 UNDERSTOOD IT, WAS ABOUT MR. CAZARES'S CHARACTERIZATION OF THE
03:16PM 8 GOVERNMENT INDICTING AS OPPOSED TO THE GRAND JURY INDICTING.

03:16PM 9 THE COURT: SURE.

03:16PM 10 MR. COOPERSMITH: AND WE ALL KNOW -- I WON'T QUOTE
03:16PM 11 THE OLD ADAGE ABOUT THE GRAND JURY, AND I KNOW THE COURT AND
03:17PM 12 THE GOVERNMENT ARE PROBABLY FAMILIAR WITH THAT.

03:17PM 13 BUT I THINK THAT WHAT WOULD HAPPEN HERE, RIGHT, IF WE WENT
03:17PM 14 DOWN THE ROAD THAT MR. SCHENK I THINK IS SUGGESTING, THAT WE'RE
03:17PM 15 GOING TO SOMEHOW TELL THE JURY THAT THERE WAS THIS OTHER BODY
03:17PM 16 OF PEOPLE CALLED THE GRAND JURY WHO VOTED AND IT'S A DIFFERENT
03:17PM 17 STANDARD, IT GETS PRETTY CONFUSING, BUT FOR JURORS WHO AREN'T
03:17PM 18 COMFORTABLE OR USED TO THE SYSTEM.

03:17PM 19 BUT WHAT I WANTED TO SAY IS TWO THINGS: ONE, THE COURT
03:17PM 20 HAS ALREADY INSTRUCTED THE JURY AND WILL INSTRUCT THEM AGAIN
03:17PM 21 ABOUT "WHAT IS EVIDENCE" IN THE CASE, AND THE COURT INSTRUCTED
03:17PM 22 THE JURY. AND I KNOW THE COURT HAS, IN OTHER CONTEXTS, HAD A
03:17PM 23 LOT OF CONFIDENCE IN JURORS FOLLOWING THE COURT'S INSTRUCTIONS,
03:17PM 24 AND THE INSTRUCTION HERE THAT OPENING STATEMENTS ARE NOT
03:17PM 25 EVIDENCE. AND I THINK MR. SCHENK COULD SAY THINGS, AND THE

03:17PM 1 COURT HAS ALREADY TOLD THE JURY BASICALLY DON'T CONSIDER THAT
03:17PM 2 TO BE EVIDENCE.

03:17PM 3 THE SECOND THING IS THAT IF WE DID GO DOWN THAT ROAD AND
03:17PM 4 WE'RE TALKING ABOUT, WELL, WHAT DOES THE GRAND JURY REALLY
03:17PM 5 MEAN? WHAT IS THE DEPARTMENT OF JUSTICE'S OBLIGATIONS?

03:17PM 6 THE DEPARTMENT OF JUSTICE'S MANUAL REQUIRES THEM TO HAVE
03:18PM 7 THE CONFIDENCE THAT THEY HAVE A BEYOND-A-REASONABLE-DOUBT CASE
03:18PM 8 BEFORE THE GOVERNMENT AND GRAND JURY, AND THAT'S THE PRACTICE
03:18PM 9 OF EVERY U.S. ATTORNEY'S OFFICE THAT I HAVE EVER HEARD OF, AND
03:18PM 10 I DON'T THINK MR. SCHENK'S OFFICE IS ANY DIFFERENT.

03:18PM 11 IF WE'RE GOING TO GO DOWN THAT ROAD, WE CAN TALK ABOUT
03:18PM 12 WHAT THEY ARE REQUIRED TO DO AND WHAT THEY'RE REQUIRED TO KNOW.

03:18PM 13 AND OUR POSITION, WHICH I THINK IS FAIR GAME IN THIS CASE,
03:18PM 14 IS THAT THE GOVERNMENT ASKED FOR THE LIS WITH A SUBPOENA, AND
03:18PM 15 THEN INDICTED TEN DAYS LATER WITHOUT EVEN GETTING IT OR EVEN
03:18PM 16 KNOWING WHETHER THEY WOULD GET IT. I THINK THAT'S RELEVANT TO
03:18PM 17 THEIR QUALITY OF THE INVESTIGATION AND THE RUSH TO JUDGMENT
03:18PM 18 THAT OCCURRED HERE, AND THAT'S OUR POSITION.

03:18PM 19 THE COURT: OKAY. WELL, I SUPPOSE -- THANK YOU FOR
03:18PM 20 THE INFORMATION. IN TRIAL ONE PROCEEDS AT THEIR OWN PERIL.

03:18PM 21 MR. COOPERSMITH: THAT IS FOR SURE, YOUR HONOR.

03:18PM 22 THE COURT: OKAY. ANYTHING FURTHER?

03:18PM 23 MR. COOPERSMITH: NO. THANK YOU.

03:18PM 24 MR. SCHENK: NO.

03:18PM 25 THE COURT: ALL RIGHT. HAVE A GREAT WEEKEND.

03:18PM

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MR. CAZARES: THANK YOU, YOUR HONOR.

03:19PM

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THE CLERK: COURT IS ADJOURNED.

03:19PM

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(COURT ADJOURNED AT 3:19 P.M.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

DATED: MARCH 23, 2022